

IN THE SUPREME COURT OF THE STATE OF NEVADA

ASPEN SPECIALTY INSURANCE
COMPANY,

Petitioner,

v.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; and THE HONORABLE
GLORIA STURMAN, DISTRICT JUDGE,
DEPT. 26,

Respondents,

ST. PAUL FIRE & MARINE
INSURANCE COMPANY; NATIONAL
UNION FIRE INSURANCE COMPANY
OF PITTSBURGH, PA; and ROOF DECK
ENTERTAINMENT, LLC d/b/a
MARQUEE NIGHTCLUB

Real Parties in Interest.

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District Court Case No. A-17-758902-C

**APPENDIX OF EXHIBITS TO
PETITION UNDER NRAP 21 FOR
WRIT OF MANDAMUS OR, IN THE
ALTERNATIVE,
PETITION FOR WRIT OF
PROHIBITION**

Volume VVIII of XIX

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DOC NO.	DOCUMENT	VOL.	BATES NO.
1	[04/25/2018] St. Paul Fire & Marine Insurance Company's First Amended Complaint [filed under seal]	I	AA00001-AA00027
2	[08/29/2019] St. Paul Fire & Marine Insurance Company's Motion for Partial Summary Judgment Against Aspen Specialty Insurance Company	I	AA00028-AA00051
3	[08/29/2019] Exhibits and Declaration of Marc J. Derewetzky in Support of St. Paul Fire & Marine Insurance Company's Motion for Partial Summary Judgment Against Aspen Specialty Insurance Company	I, II	AA00052-AA00208
4	[08/29/2019] Request for Judicial Notice in Support of St. Paul Fire & Marine Insurance Company's Motion for Partial Summary Judgment Against Aspen Specialty Insurance Company	II	AA00209-AA00285
5	[09/13/2019] Roof Deck Entertainment, LLC d/b/a Marquee Nightclub's Motion for Summary Judgment	II, III	AA00286-AA00312
6	[09/13/2019] Declaration of Nicholas B. Salerno in Support of Roof Deck Entertainment, LLC d/b/a Marquee Nightclub's Motion for Summary Judgment	III	AA00313-AA00315
7	[09/13/2019] Declaration of Bill Bonbrest in Support of Roof Deck Entertainment, LLC d/b/a Marquee Nightclub's Motion for Summary Judgment	III	AA00316-AA00318
8	[09/13/2019] Request for Judicial Notice in Support of Roof Deck Entertainment, LLC d/b/a Marquee Nightclub's Motion for Summary Judgment	III	AA00319-AA00322
9	[09/13/2019] Roof Deck Entertainment, LLC d/b/a Marquee Nightclub's Appendix of Exhibits in Support of Motion for Summary Judgment	III	AA00323-AA00411
10	[09/13/2019] National Union Fire Insurance Company of Pittsburgh PA's Motion for Summary Judgment	III	AA00412-AA00439

11	[09/13/2019] Declaration of Nicholas B. Salerno in Support of National Union Fire Insurance Company of Pittsburgh, PA's Motion for Summary Judgment	III	AA00440-AA00442
12	[09/13/2019] Declaration of Richard C. Perkins in Support of National Union Fire Insurance Company of Pittsburgh, PA's Motion for Summary Judgment	III, IV	AA00443-AA00507
13	[09/13/2019] National Union Fire Insurance Company of Pittsburgh PA's Appendix of Exhibits in Support of Motion for Summary Judgment	IV, V, VI, VII	AA00508-AA00937
14	[09/13/2019] Request for Judicial Notice in Support of National Union Fire Insurance Company of Pittsburgh PA's Motion for Summary Judgment	VII	AA00938-AA00941
15	[09/19/2019] Aspen Specialty Insurance Company's Opposition to St. Paul Fire & Marine Insurance Company's Motion for Partial Summary Judgment and Countermotion for Summary Judgment	VII, VIII	AA00942-AA01153
16	[09/27/2019] St. Paul Fire & Marine Insurance Company's Opposition to Motion for Summary Judgment filed by Roof Deck Entertainment, LLC d/b/a Marquee Nightclub and Countermotion Re: Duty to Indemnify	VIII	AA01154-AA01173
17	[09/27/2019] Declaration of William Reeves in Support of St. Paul Fire & Marine Insurance Company's Opposition to Roof Deck Entertainment, LLC d/b/a Marquee Nightclub's Motion for Summary Judgment	VIII	AA01174-AA01176
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19	[09/27/2019] St. Paul Fire & Marine Insurance Company's Opposition to Motion for Summary Judgment filed by AIG and Request for Discovery per NRCP 56(d)	VIII, IX	AA01186-AA01221
20	[09/27/2019] Declaration of Marc J. Derewetzky in Support of St. Paul Fire & Marine Insurance Company's Opposition to AIG's Motion for Summary Judgment	IX	AA01222-AA01228

21	[09/27/2019] St. Paul Fire & Marine Insurance Company's Response to National Union Fire Insurance Company of Pittsburgh PA's Statement of Undisputed Facts in Support of Motion for Summary Judgment	IX	AA01229-AA01234
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24	[10/07/2019] Roof Deck Entertainment, LLC d/b/a Marquee Nightclub's Opposition to St. Paul Fire & Marine Insurance Company's Countermotion for Summary Judgment	XI	AA01531-AA01549
25	[10/07/2019] Roof Deck Entertainment, LLC d/b/a Marquee Nightclub's Objection to Facts Not Supported by Admissible Evidence Filed in Support of St. Paul Fire & Marine Insurance Company's Opposition to Motion for Summary Judgment and Countermotion Re: Duty to Indemnify	XI	AA01550-AA01557
26	[10/07/2019] Aspen Specialty Insurance Company's Reply in Support of Its Countermotion for Summary Judgment	XI	AA01578-AA01592
27	[10/08/2019] Recorder's Transcript of Pending Motions	XI	AA01593-AA01616
28	[10/10/2019] National Union Fire Insurance Company of Pittsburgh PA's Reply in Support of Its Motion for Summary Judgment	XI	AA01617-AA01633
29	[10/10/2019] National Union Fire Insurance Company of Pittsburgh PA's Objections to Facts Not Supported by Admissible Evidence Filed in Support of St. Paul's Opposition to Motion for Summary Judgment and Request for Discovery Per NRCP 56(d)	XI, XII	AA01634-AA01656

30	[10/10/2019] Roof Deck Entertainment, LLC d/b/a Marquee Nightclub's Reply in Support of Motion for Summary Judgment	XII	AA01657-AA01667
31	[10/10/2019] St. Paul Fire & Marine Insurance Company's Reply to Roof Deck Entertainment, LLC d/b/a Marquee Nightclub's Opposition to St. Paul Fire & Marine Insurance Company's Countermotion	XII	AA01668-AA01679
32	[10/15/2019] Recorder's Transcript of Pending Motions	XII	AA01680-AA01734
33	[05/14/2020] Findings of Fact, Conclusions of Law and Order Granting Roof Deck Entertainment, LLC d/b/a Marquee Nightclub's Motion for Summary Judgment	XII	AA01735-AA01751
34	[05/14/2019] Findings of Fact, Conclusions of Law and Order Granting National Union Fire Insurance Company of Pittsburg PA's Motion for Summary Judgment	XII	AA01752-AA01770
35	[05/14/2020] Order Denying St. Paul Fire & Marine Insurance Company's Motion for Partial Summary Judgment and Order Granting in Part Aspen Specialty Insurance Company's Counter-Motion for Summary Judgment	XII	AA01771-AA01779
36	[06/11/2020] Aspen Specialty Insurance Company's Renewed Motion for Summary Judgment	XIII	AA01780-AA01808
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38	[07/02/2020] St. Paul Fire & Marine Insurance Company's Renewed Opposition to Aspen Specialty Insurance Company's Renewed Motion for Summary Judgment	XV	AA02125-AA02164
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40	[10/09/2020] Order Denying Aspen Specialty Insurance Company's Renewed Motion for Summary Judgment	XV	AA02183-AA02194
41	Aspen Specialty Insurance Company's Reservation of Rights Letters dated August 5, 2014	XVI	AA02195-AA02207
42	Aspen Specialty Insurance Company Policy of Insurance issued to The Restaurant Group et al, Policy Number CRA8XYD11	XVI	AA02208-AA02325
43	St. Paul Fire and Marine Insurance Company Policy of Insurance issued to Premier Hotel Insurance Group (P2), Policy Number QK 06503290	XVII	AA02326-AA02387
44	National Union Fire Insurance Company of Pittsburgh, PA Policy of Insurance issued to The Restaurant Group et al, Policy Number BE 25414413	XVIII	AA02388-AA02448
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POLICYHOLDER'S GUIDE TO REPORTING A CASUALTY CLAIM

A. As soon as you are aware of an event that will give rise to a claim being made against you (3rd Party Liability Claims), please be sure to quickly report the matter to both your agent/broker and Aspen Specialty Insurance Management, Inc. Be sure to include your policy number and the name of the insured as it is stated on the policy.

B. New claims can be reported to ASPEN SPECIALTY INSURANCE COMPANY as follows:

- 1. By Mail:** ASPEN SPECIALTY INSURANCE COMPANY
c/o Aspen Specialty Insurance Management, Inc.
Claims Department
600 Atlantic Avenue, Suite 2100
Boston, MA 02210
Main Telephone No: 617-532-7300
- 2. By Fax:** 617-532-7342
- 3. By Dedicated Email:** 3rd Party Liability Claims: casualty.claims@aspenspecialty.com
Claim Status Requests: casualty.status@aspenspecialty.com

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words "we", "us" and "our" refer to the company providing this insurance.

The word "insured" means any person or organization qualifying as such under Section II – Who Is An Insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section V – Definitions.

SECTION I – COVERAGES

COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section III – Limits Of Insurance; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages A and B.

- b. This insurance applies to "bodily injury" and "property damage" only if:
- (1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";

- (2) The "bodily injury" or "property damage" occurs during the policy period; and

- (3) Prior to the policy period, no insured listed under Paragraph 1. of Section II – Who Is An Insured and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.

- c. "Bodily injury" or "property damage" which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under Paragraph 1. of Section II – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim, includes any continuation, change or resumption of that "bodily injury" or "property damage" after the end of the policy period.

- d. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of Section II – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:

- (1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;
- (2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or
- (3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.

- e. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".

2. Exclusions

This insurance does not apply to:

a. Expected Or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" resulting

from the use of reasonable force to protect persons or property.

b. Contractual Liability

"Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

- (1) That the insured would have in the absence of the contract or agreement; or
- (2) Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an "insured contract", reasonable attorney fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage", provided:
 - (a) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract"; and
- (b) Such attorney fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

c. Liquor Liability

"Bodily injury" or "property damage" for which any insured may be held liable by reason of:

- (1) Causing or contributing to the intoxication of any person;
- (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages.

d. Workers' Compensation And Similar Laws

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

e. Employer's Liability

"Bodily injury" to:

- (1) An "employee" of the insured arising out of and in the course of:
 - (a) Employment by the insured; or
 - (b) Performing duties related to the conduct of the insured's business; or
- (2) The spouse, child, parent, brother or sister of that "employee" as a consequence of Para-

graph (1) above.

This exclusion applies whether the insured may be liable as an employer or in any other capacity and to any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to liability assumed by the insured under an "insured contract".

f. Pollution

- (1) "Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":
 - (a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured. However, this subparagraph does not apply to:
 - (i) "Bodily injury" if sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests;
 - (ii) "Bodily injury" or "property damage" for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or
 - (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";
 - (b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;
 - (c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:
 - (i) Any insured; or
 - (ii) Any person or organization for whom you may be legally responsible; or
 - (d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to

the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph does not apply to:

- (i) "Bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor;
 - (ii) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or
 - (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire".
- (e) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".
- (2) Any loss, cost or expense arising out of any:
- (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
 - (b) Claim or "suit" by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

However, this paragraph does not apply to liability for damages because of "property damage" that the insured would have in the absence of

such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.

g. Aircraft, Auto Or Watercraft

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to:

- (1) A watercraft while ashore on premises you own or rent;
- (2) A watercraft you do not own that is:
 - (a) Less than 26 feet long; and
 - (b) Not being used to carry persons or property for a charge;
- (3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;
- (4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft; or
- (5) "Bodily injury" or "property damage" arising out of:
 - (a) The operation of machinery or equipment that is attached to, or part of, a land vehicle that would qualify under the definition of "mobile equipment" if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged; or
 - (b) the operation of any of the machinery or equipment listed in Paragraph f.(2) or f.(3) of the definition of "mobile equipment".

h. Mobile Equipment

"Bodily injury" or "property damage" arising out of:

- (1) The transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any insured; or
- (2) The use of "mobile equipment" in, or while in practice for, or while being prepared for, any prearranged racing, speed, demolition, or stunt activity.

i. War

"Bodily injury" or "property damage", however caused, arising, directly or indirectly, out of:

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

j. Damage To Property

"Property damage" to:

- (1) Property you own, rent, or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
- (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
- (3) Property loaned to you;
- (4) Personal property in the care, custody or control of the insured;
- (5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or
- (6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire) to premises, including the contents of such premises, rented to you for a period of 7 or fewer consecutive days. A separate limit of insurance applies to Damage To Premises Rented To You as described in Section III – Limits Of Insurance.

Paragraph (2) of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraph (6) of this exclusion does not apply to "property damage" included in the "products-completed operations hazard".

k. Damage To Your Product

"Property damage" to "your product" arising out of it or any part of it.

l. Damage To Your Work

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

m. Damage To Impaired Property Or Property Not Physically Injured

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

n. Recall Of Products, Work Or Impaired Property

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- (1) "Your product";
- (2) "Your work"; or
- (3) "Impaired property";

if such product, work, or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

o. Personal And Advertising Injury

"Bodily injury" arising out of "personal and advertising injury".

p. Electronic Data

Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data.

As used in this exclusion, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

q. Distribution Of Material In Violation Of Statutes

"Bodily injury" or "property damage" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- (1) The Telephone Consumer Protection Act

(TCPA), including any amendment of or addition to such law; or

- (2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law; or
- (3) Any statute, ordinance or regulation, other than the TCPA or CAN-SPAM Act of 2003, that prohibits or limits the sending, transmitting, communicating or distribution of material or information.

Exclusions c. through n. do not apply to damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to this coverage as described in Section III – Limits Of Insurance.

COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY

1. Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "personal and advertising injury" to which this insurance does not apply. We may, at our discretion, investigate any offense and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section III – Limits Of Insurance; and
- (2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages A and B.

- b. This insurance applies to "personal and advertising injury" caused by an offense arising out of your business but only if the offense was committed in the "coverage territory" during the policy period.

2. Exclusions

This insurance does not apply to:

a. Knowing Violation Of Rights Of Another

"Personal and advertising injury" caused by or at the direction of the insured with the knowledge that the act would violate the rights of another and would inflict "personal and advertising injury".

b. Material Published With Knowledge Of Falsity

"Personal and advertising injury" arising out of oral or written publication of material, if done by or at

the direction of the insured with knowledge of its falsity.

c. Material Published Prior To Policy Period

"Personal and advertising injury" arising out of oral or written publication of material whose first publication took place before the beginning of the policy period.

d. Criminal Acts

"Personal and advertising injury" arising out of a criminal act committed by or at the direction of the insured.

e. Contractual Liability

"Personal and advertising injury" for which the insured has assumed liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement.

f. Breach Of Contract

"Personal and advertising injury" arising out of a breach of contract, except an implied contract to use another's advertising idea in your "advertisement".

g. Quality Or Performance Of Goods – Failure To Conform To Statements

"Personal and advertising injury" arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement".

h. Wrong Description Of Prices

"Personal and advertising injury" arising out of the wrong description of the price of goods, products or services stated in your "advertisement".

i. Infringement Of Copyright, Patent, Trademark Or Trade Secret

"Personal and advertising injury" arising out of the infringement of copyright, patent, trademark, trade secret or other intellectual property rights. Under this exclusion, such other intellectual property rights do not include the use of another's advertising idea in your "advertisement".

However, this exclusion does not apply to infringement, in your "advertisement", of copyright, trade dress or slogan.

j. Insureds In Media And Internet Type Businesses

"Personal and advertising injury" committed by an insured whose business is:

- (1) Advertising, broadcasting, publishing or telecasting;
- (2) Designing or determining content of web-sites for others; or
- (3) An Internet search, access, content or service provider.

However, this exclusion does not apply to Paragraphs 14.a., b. and c. of "personal and advertising injury" under the Definitions Section.

For the purposes of this exclusion, the placing of frames, borders or links, or advertising, for you or others anywhere on the Internet, is not by itself, considered the business of advertising, broadcasting, publishing or telecasting.

k. Electronic Chatrooms Or Bulletin Boards

"Personal and advertising injury" arising out of an electronic chatroom or bulletin board the insured hosts, owns, or over which the insured exercises control.

l. Unauthorized Use Of Another's Name Or Product

"Personal and advertising injury" arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatag, or any other similar tactics to mislead another's potential customers.

m. Pollution

"Personal and advertising injury" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time.

n. Pollution-Related

Any loss, cost or expense arising out of any:

- (1) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
- (2) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

o. War

"Personal and advertising injury", however caused, arising, directly or indirectly, out of:

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

p. Distribution Of Material In Violation Of Statutes

"Personal and advertising injury" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- (1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law; or
- (2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law; or
- (3) Any statute, ordinance or regulation, other than the TCPA or CAN-SPAM Act of 2003, that prohibits or limits the sending, transmitting, communicating or distribution of material or information.

COVERAGE C MEDICAL PAYMENTS

1. Insuring Agreement

a. We will pay medical expenses as described below for "bodily injury" caused by an accident:

- (1) On premises you own or rent;
- (2) On ways next to premises you own or rent; or
- (3) Because of your operations;

provided that:

- (a) The accident takes place in the "coverage territory" and during the policy period;
- (b) The expenses are incurred and reported to us within one year of the date of the accident; and
- (c) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.

b. We will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance. We will pay reasonable expenses for:

- (1) First aid administered at the time of an accident;
- (2) Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and
- (3) Necessary ambulance, hospital, professional nursing and funeral services.

2. Exclusions

We will not pay expenses for "bodily injury":

a. Any Insured

To any insured, except "volunteer workers".

b. Hired Person

To a person hired to do work for or on behalf of any insured or a tenant of any insured.

c. Injury On Normally Occupied Premises

To a person injured on that part of premises you own or rent that the person normally occupies.

d. Workers Compensation And Similar Laws

To a person, whether or not an "employee" of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers' compensation or disability benefits law or a similar law.

e. Athletics Activities

To a person injured while practicing, instructing or participating in any physical exercises or games, sports, or athletic contests.

f. Products-Completed Operations Hazard

Included within the "products-completed operations hazard".

g. Coverage A Exclusions

Excluded under Coverage A.

SUPPLEMENTARY PAYMENTS – COVERAGES A AND B

1. We will pay, with respect to any claim we investigate or settle, or any "suit" against an insured we defend:

- a. All expenses we incur.
- b. Up to \$250 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.
- c. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
- d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$250 a day because of time off from work.
- e. All court costs taxed against the insured in the "suit". However, these payments do not include attorneys' fees or attorneys' expenses taxed against the insured.
- f. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
- g. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

These payments will not reduce the limits of insurance.

2. If we defend an insured against a "suit" and an indemnitee of the insured is also named as a party to the "suit", we will defend that indemnitee if all of the following conditions are met:

- a. The "suit" against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";
- b. This insurance applies to such liability assumed by the insured;
- c. The obligation to defend, or the cost of the defense

of, that indemnitee, has also been assumed by the insured in the same "insured contract";

d. The allegations in the "suit" and the information we know about the "occurrence" are such that no conflict appears to exist between the interests of the insured and the interests of the indemnitee;

e. The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such "suit" and agree that we can assign the same counsel to defend the insured and the indemnitee; and

f. The indemnitee:

(1) Agrees in writing to:

- (a) Cooperate with us in the investigation, settlement or defense of the "suit";
- (b) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";
- (c) Notify any other insurer whose coverage is available to the indemnitee; and
- (d) Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and

(2) Provides us with written authorization to:

- (a) Obtain records and other information related to the "suit"; and
- (b) Conduct and control the defense of the indemnitee in such "suit".

So long as the above conditions are met, attorneys' fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments. Notwithstanding the provisions of Paragraph 2.b.(2) of Section I – Coverage A – Bodily Injury And Property Damage Liability, such payments will not be deemed to be damages for "bodily injury" and "property damage" and will not reduce the limits of insurance.

Our obligation to defend an insured's indemnitee and to pay for attorneys' fees and necessary litigation expenses as Supplementary Payments ends when we have used up the applicable limit of insurance in the payment of judgments or settlements or the conditions set forth above, or the terms of the agreement described in Paragraph f. above, are no longer met.

SECTION II – WHO IS AN INSURED

1. If you are designated in the Declarations as:

- a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
- b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the con-

duct of your business.

- c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
 - d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
 - e. A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.
2. Each of the following is also an insured:
- a. Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, none of these "employees" or "volunteer workers" are insureds for:
 - (1) "Bodily injury" or "personal and advertising injury":
 - (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;
 - (b) To the spouse, child, parent, brother or sister of that co-"employee" or "volunteer worker" as a consequence of Paragraph (1)(a) above;
 - (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs (1)(a) or (b) above; or
 - (d) Arising out of his or her providing or failing to provide professional health care services.
 - (2) "Property damage" to property:
 - (a) Owned, occupied or used by,
 - (b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by
- you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you

are a limited liability company).

- b. Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.
 - c. Any person or organization having proper temporary custody of your property if you die, but only:
 - (1) With respect to liability arising out of the maintenance or use of that property; and
 - (2) Until your legal representative has been appointed.
 - d. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Part.
3. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:
- a. Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier;
 - b. Coverage A does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
 - c. Coverage B does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

SECTION III – LIMITS OF INSURANCE

1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
- a. Insureds;
 - b. Claims made or "suits" brought; or
 - c. Persons or organizations making claims or bringing "suits".
2. The General Aggregate Limit is the most we will pay for the sum of:
- a. Medical expenses under Coverage C;
 - b. Damages under Coverage A, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; and
 - c. Damages under Coverage B.
3. The Products-Completed Operations Aggregate Limit is the most we will pay under Coverage A for damages because of "bodily injury" and "property damage"

included in the "products-completed operations hazard".

4. Subject to Paragraph 2. above, the Personal and Advertising Injury Limit is the most we will pay under Coverage B for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization.
5. Subject to Paragraph 2. or 3. above, whichever applies, the Each Occurrence Limit is the most we will pay for the sum of:
 - a. Damages under Coverage A; and
 - b. Medical expenses under Coverage Cbecause of all "bodily injury" and "property damage" arising out of any one "occurrence".
6. Subject to Paragraph 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage A for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, while rented to you or temporarily occupied by you with permission of the owner.
7. Subject to Paragraph 5. above, the Medical Expense Limit is the most we will pay under Coverage C for all medical expenses because of "bodily injury" sustained by any one person.

The Limits of Insurance of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS

1. Bankruptcy

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

2. Duties In The Event Of Occurrence, Offense, Claim Or Suit

- a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:
 - (1) How, when and where the "occurrence" or offense took place;
 - (2) The names and addresses of any injured persons and witnesses; and
 - (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.
- b. If a claim is made or "suit" is brought against any insured, you must:

- (1) Immediately record the specifics of the claim or "suit" and the date received; and

- (2) Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or "suit" as soon as practicable.

c. You and any other involved insured must:

- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
- (2) Authorize us to obtain records and other information;
- (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and
- (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.

- d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

3. Legal Action Against Us

No person or organization has a right under this Coverage Part:

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- b. To sue us on this Coverage Part unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this Coverage Part or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

4. Other Insurance

If other valid and collectible insurance is available to the insured for a loss we cover under Coverages A or B of this Coverage Part, our obligations are limited as follows:

a. Primary Insurance

This insurance is primary except when Paragraph b. below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in Paragraph c. below.

b. Excess Insurance

- (1) This insurance is excess over:

- (a) Any of the other insurance, whether primary, excess, contingent or on any other

basis:

- (i) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";
 - (ii) That is Fire insurance for premises rented to you or temporarily occupied by you with permission of the owner;
 - (iii) That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner; or
 - (iv) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion g. of Section I – Coverage A – Bodily Injury And Property Damage Liability.
- (b) Any other primary insurance available to you covering liability for damages arising out of the premises or operations, or the products and completed operations, for which you have been added as an additional insured by attachment of an endorsement.
- (2) When this insurance is excess, we will have no duty under Coverages A or B to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.
- (3) When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:
- (a) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
 - (b) The total of all deductible and self-insured amounts under all that other insurance.
- (4) We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

c. Method Of Sharing

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

5. Premium Audit

- a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.
- b. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period and send notice to the first Named Insured. The due date for audit and retrospective premiums is the date shown as the due date on the bill. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.
- c. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

6. Representations

By accepting this policy, you agree:

- a. The statements in the Declarations are accurate and complete;
- b. Those statements are based upon representations you made to us; and
- c. We have issued this policy in reliance upon your representations.

7. Separation Of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom claim is made or "suit" is brought.

8. Transfer Of Rights Of Recovery Against Others To Us

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

9. When We Do Not Renew

If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

SECTION V – DEFINITIONS

- 1. "Advertisement" means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For the

purposes of this definition:

- a. Notices that are published include material placed on the Internet or on similar electronic means of communication; and
 - b. Regarding web-sites, only that part of a web-site that is about your goods, products or services for the purposes of attracting customers or supporters is considered an advertisement.
2. "Auto" means:
- a. A land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment; or
 - b. Any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged.
- However, "auto" does not include "mobile equipment".
3. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.
4. "Coverage territory" means:
- a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
 - b. International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in Paragraph a. above; or
 - c. All other parts of the world if the injury or damage arises out of:
 - (1) Goods or products made or sold by you in the territory described in Paragraph a. above;
 - (2) The activities of a person whose home is in the territory described in Paragraph a. above, but is away for a short time on your business; or
 - (3) "Personal and advertising injury" offenses that take place through the Internet or similar electronic means of communication
- provided the insured's responsibility to pay damages is determined in a "suit" on the merits, in the territory described in Paragraph a. above or in a settlement we agree to.
5. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
6. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.
7. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.
8. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:
- a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or

- b. You have failed to fulfill the terms of a contract or agreement;
- if such property can be restored to use by the repair, replacement, adjustment or removal of "your product" or "your work" or your fulfilling the terms of the contract or agreement.
9. "Insured contract" means:
- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
 - b. A sidetrack agreement;
 - c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
 - d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
 - e. An elevator maintenance agreement;
 - f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.
- Paragraph f. does not include that part of any contract or agreement:
- (1) That indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing;
 - (2) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
 - (a) Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
 - (3) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (2) above and supervisory, inspection, architectural or engineering activities.
10. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you

and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".

11. "Loading or unloading" means the handling of property:

- a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
- b. While it is in or on an aircraft, watercraft or "auto"; or
- c. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;

but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".

12. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:

- a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
- b. Vehicles maintained for use solely on or next to premises you own or rent;
- c. Vehicles that travel on crawler treads;
- d. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:

(1) Power cranes, shovels, loaders, diggers or drills; or

(2) Road construction or resurfacing equipment such as graders, scrapers or rollers;

- e. Vehicles not described in Paragraph a., b., c. or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:

(1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or

(2) Cherry pickers and similar devices used to raise or lower workers;

- f. Vehicles not described in Paragraph a., b., c. or d. above maintained primarily for purposes other than the transportation of persons or cargo.

However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":

(1) Equipment designed primarily for:

- (a) Snow removal;
- (b) Road maintenance, but not construction or resurfacing; or
- (c) Street cleaning;

(2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and

- (3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

However, "mobile equipment" does not include any land vehicles that are subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law are considered "autos".

13. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

14. "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:

- a. False arrest, detention or imprisonment;
- b. Malicious prosecution;
- c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;
- d. Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
- e. Oral or written publication, in any manner, of material that violates a person's right of privacy;
- f. The use of another's advertising idea in your "advertisement"; or
- g. Infringing upon another's copyright, trade dress or slogan in your "advertisement".

15. "Pollutants" mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

16. "Products-completed operations hazard":

- a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:

(1) Products that are still in your physical possession; or

(2) Work that has not yet been completed or abandoned. However, "your work" will be deemed completed at the earliest of the following times:

(a) When all of the work called for in your contract has been completed.

(b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.

(c) When that part of the work done at a job site has been put to its intended use by any per-

son or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

- b. Does not include "bodily injury" or "property damage" arising out of:

- (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured;
- (2) The existence of tools, uninstalled equipment or abandoned or unused materials; or
- (3) Products or operations for which the classification, listed in the Declarations or in a policy schedule, states that products-completed operations are subject to the General Aggregate Limit.

17. "Property damage" means:

- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
- b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.

For the purposes of this insurance, electronic data is not tangible property.

As used in this definition, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

18. "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies are alleged. "Suit" includes:

- a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
- b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which

the insured submits with our consent.

19. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.

20. "Volunteer worker" means a person who is not your "employee", and who donates his or her work and acts at the direction of and within the scope of duties determined by you, and is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.

21. "Your product":

a. Means:

- (1) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:

- (a) You;
- (b) Others trading under your name; or
- (c) A person or organization whose business or assets you have acquired; and

- (2) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

b. Includes:

- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and
- (2) The providing of or failure to provide warnings or instructions.

c. Does not include vending machines or other property rented to or located for the use of others but not sold.

22. "Your work":

a. Means:

- (1) Work or operations performed by you or on your behalf; and
- (2) Materials, parts or equipment furnished in connection with such work or operations.

b. Includes:

- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work", and
- (2) The providing of or failure to provide warnings or instructions.

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words "we", "us" and "our" refer to the company providing this insurance.

The word "insured" means any person or organization qualifying as such under Section II – Who Is An Insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section V – Definitions.

SECTION I – COVERAGES

COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section III – Limits Of Insurance; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages A and B.

- b. This insurance applies to "bodily injury" and "property damage" only if:
- (1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";

- (2) The "bodily injury" or "property damage" occurs during the policy period; and

- (3) Prior to the policy period, no insured listed under Paragraph 1. of Section II – Who Is An Insured and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.

- c. "Bodily injury" or "property damage" which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under Paragraph 1. of Section II – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim, includes any continuation, change or resumption of that "bodily injury" or "property damage" after the end of the policy period.

- d. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of Section II – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:

- (1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;
- (2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or
- (3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.

- e. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".

2. Exclusions

This insurance does not apply to:

a. Expected Or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" resulting

from the use of reasonable force to protect persons or property.

b. Contractual Liability

"Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

- (1) That the insured would have in the absence of the contract or agreement; or
- (2) Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an "insured contract", reasonable attorney fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage", provided:
 - (a) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract"; and
- (b) Such attorney fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

c. Liquor Liability

"Bodily injury" or "property damage" for which any insured may be held liable by reason of:

- (1) Causing or contributing to the intoxication of any person;
- (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages.

d. Workers' Compensation And Similar Laws

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

e. Employer's Liability

"Bodily injury" to:

- (1) An "employee" of the insured arising out of and in the course of:
 - (a) Employment by the insured; or
 - (b) Performing duties related to the conduct of the insured's business; or
- (2) The spouse, child, parent, brother or sister of that "employee" as a consequence of Para-

graph (1) above.

This exclusion applies whether the insured may be liable as an employer or in any other capacity and to any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to liability assumed by the insured under an "insured contract".

f. Pollution

- (1) "Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

- (a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured. However, this subparagraph does not apply to:

- (i) "Bodily injury" if sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests;

- (ii) "Bodily injury" or "property damage" for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or

- (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";

- (b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;

- (c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:

- (i) Any insured; or

- (ii) Any person or organization for whom you may be legally responsible; or

- (d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to

the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph does not apply to:

- (i) "Bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor;
 - (ii) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or
 - (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire".
- (e) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".
- (2) Any loss, cost or expense arising out of any:
- (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
 - (b) Claim or "suit" by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

However, this paragraph does not apply to liability for damages because of "property damage" that the insured would have in the absence of

such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.

g. Aircraft, Auto Or Watercraft

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to:

- (1) A watercraft while ashore on premises you own or rent;
- (2) A watercraft you do not own that is:
 - (a) Less than 26 feet long; and
 - (b) Not being used to carry persons or property for a charge;
- (3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;
- (4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft; or
- (5) "Bodily injury" or "property damage" arising out of:
 - (a) The operation of machinery or equipment that is attached to, or part of, a land vehicle that would qualify under the definition of "mobile equipment" if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged; or
 - (b) the operation of any of the machinery or equipment listed in Paragraph f.(2) or f.(3) of the definition of "mobile equipment".

h. Mobile Equipment

"Bodily injury" or "property damage" arising out of:

- (1) The transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any insured; or
- (2) The use of "mobile equipment" in, or while in practice for, or while being prepared for, any prearranged racing, speed, demolition, or stunt activity.

i. War

"Bodily injury" or "property damage", however caused, arising, directly or indirectly, out of:

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

j. Damage To Property

"Property damage" to:

- (1) Property you own, rent, or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
- (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
- (3) Property loaned to you;
- (4) Personal property in the care, custody or control of the insured;
- (5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or
- (6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire) to premises, including the contents of such premises, rented to you for a period of 7 or fewer consecutive days. A separate limit of insurance applies to Damage To Premises Rented To You as described in Section III – Limits Of Insurance.

Paragraph (2) of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraph (6) of this exclusion does not apply to "property damage" included in the "products-completed operations hazard".

k. Damage To Your Product

"Property damage" to "your product" arising out of it or any part of it.

l. Damage To Your Work

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

m. Damage To Impaired Property Or Property Not Physically Injured

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

n. Recall Of Products, Work Or Impaired Property

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- (1) "Your product";
- (2) "Your work"; or
- (3) "Impaired property";

if such product, work, or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

o. Personal And Advertising Injury

"Bodily injury" arising out of "personal and advertising injury".

p. Electronic Data

Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data.

As used in this exclusion, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

q. Distribution Of Material In Violation Of Statutes

"Bodily injury" or "property damage" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- (1) The Telephone Consumer Protection Act

(TCPA), including any amendment of or addition to such law; or

- (2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law; or
- (3) Any statute, ordinance or regulation, other than the TCPA or CAN-SPAM Act of 2003, that prohibits or limits the sending, transmitting, communicating or distribution of material or information.

Exclusions c. through n. do not apply to damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to this coverage as described in Section III – Limits Of Insurance.

COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY

1. Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "personal and advertising injury" to which this insurance does not apply. We may, at our discretion, investigate any offense and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section III – Limits Of Insurance; and
- (2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages A and B.

- b. This insurance applies to "personal and advertising injury" caused by an offense arising out of your business but only if the offense was committed in the "coverage territory" during the policy period.

2. Exclusions

This insurance does not apply to:

a. Knowing Violation Of Rights Of Another

"Personal and advertising injury" caused by or at the direction of the insured with the knowledge that the act would violate the rights of another and would inflict "personal and advertising injury".

b. Material Published With Knowledge Of Falsity

"Personal and advertising injury" arising out of oral or written publication of material, if done by or at

the direction of the insured with knowledge of its falsity.

c. Material Published Prior To Policy Period

"Personal and advertising injury" arising out of oral or written publication of material whose first publication took place before the beginning of the policy period.

d. Criminal Acts

"Personal and advertising injury" arising out of a criminal act committed by or at the direction of the insured.

e. Contractual Liability

"Personal and advertising injury" for which the insured has assumed liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement.

f. Breach Of Contract

"Personal and advertising injury" arising out of a breach of contract, except an implied contract to use another's advertising idea in your "advertisement".

g. Quality Or Performance Of Goods – Failure To Conform To Statements

"Personal and advertising injury" arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement".

h. Wrong Description Of Prices

"Personal and advertising injury" arising out of the wrong description of the price of goods, products or services stated in your "advertisement".

i. Infringement Of Copyright, Patent, Trademark Or Trade Secret

"Personal and advertising injury" arising out of the infringement of copyright, patent, trademark, trade secret or other intellectual property rights. Under this exclusion, such other intellectual property rights do not include the use of another's advertising idea in your "advertisement".

However, this exclusion does not apply to infringement, in your "advertisement", of copyright, trade dress or slogan.

j. Insureds In Media And Internet Type Businesses

"Personal and advertising injury" committed by an insured whose business is:

- (1) Advertising, broadcasting, publishing or telecasting;
- (2) Designing or determining content of web-sites for others; or
- (3) An Internet search, access, content or service provider.

However, this exclusion does not apply to Paragraphs 14.a., b. and c. of "personal and advertising injury" under the Definitions Section.

For the purposes of this exclusion, the placing of frames, borders or links, or advertising, for you or others anywhere on the Internet, is not by itself, considered the business of advertising, broadcasting, publishing or telecasting.

k. Electronic Chatrooms Or Bulletin Boards

"Personal and advertising injury" arising out of an electronic chatroom or bulletin board the insured hosts, owns, or over which the insured exercises control.

l. Unauthorized Use Of Another's Name Or Product

"Personal and advertising injury" arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatag, or any other similar tactics to mislead another's potential customers.

m. Pollution

"Personal and advertising injury" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time.

n. Pollution-Related

Any loss, cost or expense arising out of any:

- (1) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
- (2) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

o. War

"Personal and advertising injury", however caused, arising, directly or indirectly, out of:

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

p. Distribution Of Material In Violation Of Statutes

"Personal and advertising injury" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- (1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law; or
- (2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law; or
- (3) Any statute, ordinance or regulation, other than the TCPA or CAN-SPAM Act of 2003, that prohibits or limits the sending, transmitting, communicating or distribution of material or information.

COVERAGE C MEDICAL PAYMENTS

1. Insuring Agreement

- a. We will pay medical expenses as described below for "bodily injury" caused by an accident:

- (1) On premises you own or rent;
- (2) On ways next to premises you own or rent; or
- (3) Because of your operations;

provided that:

- (a) The accident takes place in the "coverage territory" and during the policy period;
- (b) The expenses are incurred and reported to us within one year of the date of the accident; and
- (c) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.

- b. We will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance. We will pay reasonable expenses for:

- (1) First aid administered at the time of an accident;
- (2) Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and
- (3) Necessary ambulance, hospital, professional nursing and funeral services.

2. Exclusions

We will not pay expenses for "bodily injury":

a. Any Insured

To any insured, except "volunteer workers".

b. Hired Person

To a person hired to do work for or on behalf of any insured or a tenant of any insured.

c. Injury On Normally Occupied Premises

To a person injured on that part of premises you own or rent that the person normally occupies.

d. Workers Compensation And Similar Laws

To a person, whether or not an "employee" of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers' compensation or disability benefits law or a similar law.

e. Athletics Activities

To a person injured while practicing, instructing or participating in any physical exercises or games, sports, or athletic contests.

f. Products-Completed Operations Hazard

Included within the "products-completed operations hazard".

g. Coverage A Exclusions

Excluded under Coverage A.

SUPPLEMENTARY PAYMENTS – COVERAGES A AND B

1. We will pay, with respect to any claim we investigate or settle, or any "suit" against an insured we defend:

- a. All expenses we incur.
- b. Up to \$250 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.
- c. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
- d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$250 a day because of time off from work.
- e. All court costs taxed against the insured in the "suit". However, these payments do not include attorneys' fees or attorneys' expenses taxed against the insured.
- f. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
- g. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

These payments will not reduce the limits of insurance.

2. If we defend an insured against a "suit" and an indemnitee of the insured is also named as a party to the "suit", we will defend that indemnitee if all of the following conditions are met:

- a. The "suit" against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";
- b. This insurance applies to such liability assumed by the insured;
- c. The obligation to defend, or the cost of the defense

of, that indemnitee, has also been assumed by the insured in the same "insured contract";

d. The allegations in the "suit" and the information we know about the "occurrence" are such that no conflict appears to exist between the interests of the insured and the interests of the indemnitee;

e. The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such "suit" and agree that we can assign the same counsel to defend the insured and the indemnitee; and

f. The indemnitee:

(1) Agrees in writing to:

- (a) Cooperate with us in the investigation, settlement or defense of the "suit";
- (b) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";
- (c) Notify any other insurer whose coverage is available to the indemnitee; and
- (d) Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and

(2) Provides us with written authorization to:

- (a) Obtain records and other information related to the "suit"; and
- (b) Conduct and control the defense of the indemnitee in such "suit".

So long as the above conditions are met, attorneys' fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments. Notwithstanding the provisions of Paragraph 2.b.(2) of Section I – Coverage A – Bodily Injury And Property Damage Liability, such payments will not be deemed to be damages for "bodily injury" and "property damage" and will not reduce the limits of insurance.

Our obligation to defend an insured's indemnitee and to pay for attorneys' fees and necessary litigation expenses as Supplementary Payments ends when we have used up the applicable limit of insurance in the payment of judgments or settlements or the conditions set forth above, or the terms of the agreement described in Paragraph f. above, are no longer met.

SECTION II – WHO IS AN INSURED

1. If you are designated in the Declarations as:

- a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
- b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the con-

duct of your business.

- c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
 - d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
 - e. A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.
2. Each of the following is also an insured:
- a. Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, none of these "employees" or "volunteer workers" are insureds for:
 - (1) "Bodily injury" or "personal and advertising injury":
 - (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;
 - (b) To the spouse, child, parent, brother or sister of that co-"employee" or "volunteer worker" as a consequence of Paragraph (1)(a) above;
 - (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs (1)(a) or (b) above; or
 - (d) Arising out of his or her providing or failing to provide professional health care services.
 - (2) "Property damage" to property:
 - (a) Owned, occupied or used by,
 - (b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by

you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you

are a limited liability company).

- b. Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.
 - c. Any person or organization having proper temporary custody of your property if you die, but only:
 - (1) With respect to liability arising out of the maintenance or use of that property; and
 - (2) Until your legal representative has been appointed.
 - d. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Part.
3. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:
- a. Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier;
 - b. Coverage A does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
 - c. Coverage B does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

SECTION III – LIMITS OF INSURANCE

1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
- a. Insureds;
 - b. Claims made or "suits" brought; or
 - c. Persons or organizations making claims or bringing "suits".
2. The General Aggregate Limit is the most we will pay for the sum of:
- a. Medical expenses under Coverage C;
 - b. Damages under Coverage A, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; and
 - c. Damages under Coverage B.
3. The Products-Completed Operations Aggregate Limit is the most we will pay under Coverage A for damages because of "bodily injury" and "property damage"

included in the "products-completed operations hazard".

4. Subject to Paragraph 2. above, the Personal and Advertising Injury Limit is the most we will pay under Coverage B for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization.
5. Subject to Paragraph 2. or 3. above, whichever applies, the Each Occurrence Limit is the most we will pay for the sum of:
 - a. Damages under Coverage A; and
 - b. Medical expenses under Coverage Cbecause of all "bodily injury" and "property damage" arising out of any one "occurrence".
6. Subject to Paragraph 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage A for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, while rented to you or temporarily occupied by you with permission of the owner.
7. Subject to Paragraph 5. above, the Medical Expense Limit is the most we will pay under Coverage C for all medical expenses because of "bodily injury" sustained by any one person.

The Limits of Insurance of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS

1. Bankruptcy

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

2. Duties In The Event Of Occurrence, Offense, Claim Or Suit

- a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:
 - (1) How, when and where the "occurrence" or offense took place;
 - (2) The names and addresses of any injured persons and witnesses; and
 - (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.
- b. If a claim is made or "suit" is brought against any insured, you must:

- (1) Immediately record the specifics of the claim or "suit" and the date received; and

- (2) Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or "suit" as soon as practicable.

c. You and any other involved insured must:

- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";

- (2) Authorize us to obtain records and other information;

- (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and

- (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.

- d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

3. Legal Action Against Us

No person or organization has a right under this Coverage Part:

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- b. To sue us on this Coverage Part unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this Coverage Part or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

4. Other Insurance

If other valid and collectible insurance is available to the insured for a loss we cover under Coverages A or B of this Coverage Part, our obligations are limited as follows:

a. Primary Insurance

This insurance is primary except when Paragraph b. below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in Paragraph c. below.

b. Excess Insurance

- (1) This insurance is excess over:

- (a) Any of the other insurance, whether primary, excess, contingent or on any other

basis:

- (i) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";
 - (ii) That is Fire insurance for premises rented to you or temporarily occupied by you with permission of the owner;
 - (iii) That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner; or
 - (iv) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion g. of Section I – Coverage A – Bodily Injury And Property Damage Liability.
- (b) Any other primary insurance available to you covering liability for damages arising out of the premises or operations, or the products and completed operations, for which you have been added as an additional insured by attachment of an endorsement.
- (2) When this insurance is excess, we will have no duty under Coverages A or B to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.
- (3) When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:
- (a) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
 - (b) The total of all deductible and self-insured amounts under all that other insurance.
- (4) We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

c. Method Of Sharing

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

5. Premium Audit

- a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.
- b. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period and send notice to the first Named Insured. The due date for audit and retrospective premiums is the date shown as the due date on the bill. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.
- c. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

6. Representations

By accepting this policy, you agree:

- a. The statements in the Declarations are accurate and complete;
- b. Those statements are based upon representations you made to us; and
- c. We have issued this policy in reliance upon your representations.

7. Separation Of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom claim is made or "suit" is brought.

8. Transfer Of Rights Of Recovery Against Others To Us

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

9. When We Do Not Renew

If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

SECTION V – DEFINITIONS

- 1. "Advertisement" means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For the

purposes of this definition:

- a. Notices that are published include material placed on the Internet or on similar electronic means of communication; and
 - b. Regarding web-sites, only that part of a web-site that is about your goods, products or services for the purposes of attracting customers or supporters is considered an advertisement.
2. "Auto" means:
- a. A land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment; or
 - b. Any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged.
- However, "auto" does not include "mobile equipment".
3. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.
4. "Coverage territory" means:
- a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
 - b. International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in Paragraph a. above; or
 - c. All other parts of the world if the injury or damage arises out of:
 - (1) Goods or products made or sold by you in the territory described in Paragraph a. above;
 - (2) The activities of a person whose home is in the territory described in Paragraph a. above, but is away for a short time on your business; or
 - (3) "Personal and advertising injury" offenses that take place through the Internet or similar electronic means of communication
- provided the insured's responsibility to pay damages is determined in a "suit" on the merits, in the territory described in Paragraph a. above or in a settlement we agree to.
5. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
6. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.
7. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.
8. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:
- a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or

- b. You have failed to fulfill the terms of a contract or agreement;

if such property can be restored to use by the repair, replacement, adjustment or removal of "your product" or "your work" or your fulfilling the terms of the contract or agreement.

9. "Insured contract" means:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
- b. A sidetrack agreement;
- c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
- d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement;
- f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph f. does not include that part of any contract or agreement:

- (1) That indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing;
 - (2) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
 - (a) Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
 - (3) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (2) above and supervisory, inspection, architectural or engineering activities.
10. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you

and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".

11. "Loading or unloading" means the handling of property:

- a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
 - b. While it is in or on an aircraft, watercraft or "auto"; or
 - c. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;
- but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".

12. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:

- a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
 - b. Vehicles maintained for use solely on or next to premises you own or rent;
 - c. Vehicles that travel on crawler treads;
 - d. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
 - (1) Power cranes, shovels, loaders, diggers or drills; or
 - (2) Road construction or resurfacing equipment such as graders, scrapers or rollers;
 - e. Vehicles not described in Paragraph a., b., c. or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
 - (1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
 - (2) Cherry pickers and similar devices used to raise or lower workers;
 - f. Vehicles not described in Paragraph a., b., c. or d. above maintained primarily for purposes other than the transportation of persons or cargo.
- However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":

- (1) Equipment designed primarily for:
 - (a) Snow removal;
 - (b) Road maintenance, but not construction or resurfacing; or
 - (c) Street cleaning;
- (2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and

- (3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

However, "mobile equipment" does not include any land vehicles that are subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law are considered "autos".

13. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

14. "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:

- a. False arrest, detention or imprisonment;
- b. Malicious prosecution;
- c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;
- d. Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
- e. Oral or written publication, in any manner, of material that violates a person's right of privacy;
- f. The use of another's advertising idea in your "advertisement"; or
- g. Infringing upon another's copyright, trade dress or slogan in your "advertisement".

15. "Pollutants" mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

16. "Products-completed operations hazard":

- a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:
 - (1) Products that are still in your physical possession; or
 - (2) Work that has not yet been completed or abandoned. However, "your work" will be deemed completed at the earliest of the following times:
 - (a) When all of the work called for in your contract has been completed.
 - (b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.
 - (c) When that part of the work done at a job site has been put to its intended use by any per-

son or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

- b. Does not include "bodily injury" or "property damage" arising out of:

- (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured;
- (2) The existence of tools, uninstalled equipment or abandoned or unused materials; or
- (3) Products or operations for which the classification, listed in the Declarations or in a policy schedule, states that products-completed operations are subject to the General Aggregate Limit.

17. "Property damage" means:

- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
- b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.

For the purposes of this insurance, electronic data is not tangible property.

As used in this definition, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

18. "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies are alleged. "Suit" includes:

- a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
- b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which

the insured submits with our consent.

19. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.

20. "Volunteer worker" means a person who is not your "employee", and who donates his or her work and acts at the direction of and within the scope of duties determined by you, and is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.

21. "Your product":

a. Means:

- (1) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
 - (a) You;
 - (b) Others trading under your name; or
 - (c) A person or organization whose business or assets you have acquired; and
- (2) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

b. Includes:

- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and
- (2) The providing of or failure to provide warnings or instructions.

c. Does not include vending machines or other property rented to or located for the use of others but not sold.

22. "Your work":

a. Means:

- (1) Work or operations performed by you or on your behalf; and
- (2) Materials, parts or equipment furnished in connection with such work or operations.

b. Includes:

- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work", and
- (2) The providing of or failure to provide warnings or instructions.

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words "we", "us" and "our" refer to the company providing this insurance.

The word "insured" means any person or organization qualifying as such under Section II – Who Is An Insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section V – Definitions.

SECTION I – COVERAGES

COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section III – Limits Of Insurance; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages A and B.

- b. This insurance applies to "bodily injury" and "property damage" only if:
- (1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";

- (2) The "bodily injury" or "property damage" occurs during the policy period; and

- (3) Prior to the policy period, no insured listed under Paragraph 1. of Section II – Who Is An Insured and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.

- c. "Bodily injury" or "property damage" which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under Paragraph 1. of Section II – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim, includes any continuation, change or resumption of that "bodily injury" or "property damage" after the end of the policy period.

- d. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of Section II – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:

- (1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;
- (2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or
- (3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.

- e. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".

2. Exclusions

This insurance does not apply to:

a. Expected Or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" resulting

from the use of reasonable force to protect persons or property.

b. Contractual Liability

"Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

- (1) That the insured would have in the absence of the contract or agreement; or
- (2) Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an "insured contract", reasonable attorney fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage", provided:
 - (a) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract"; and
- (b) Such attorney fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

c. Liquor Liability

"Bodily injury" or "property damage" for which any insured may be held liable by reason of:

- (1) Causing or contributing to the intoxication of any person;
- (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages.

d. Workers' Compensation And Similar Laws

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

e. Employer's Liability

"Bodily injury" to:

- (1) An "employee" of the insured arising out of and in the course of:
 - (a) Employment by the insured; or
 - (b) Performing duties related to the conduct of the insured's business; or
- (2) The spouse, child, parent, brother or sister of that "employee" as a consequence of Para-

graph (1) above.

This exclusion applies whether the insured may be liable as an employer or in any other capacity and to any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to liability assumed by the insured under an "insured contract".

f. Pollution

- (1) "Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

- (a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured. However, this subparagraph does not apply to:

- (i) "Bodily injury" if sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests;

- (ii) "Bodily injury" or "property damage" for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or

- (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";

- (b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;

- (c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:

- (i) Any insured; or

- (ii) Any person or organization for whom you may be legally responsible; or

- (d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to

the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph does not apply to:

- (i) "Bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor;
 - (ii) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or
 - (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire".
- (e) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".
- (2) Any loss, cost or expense arising out of any:
- (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
 - (b) Claim or "suit" by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

However, this paragraph does not apply to liability for damages because of "property damage" that the insured would have in the absence of

such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.

g. Aircraft, Auto Or Watercraft

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to:

- (1) A watercraft while ashore on premises you own or rent;
- (2) A watercraft you do not own that is:
 - (a) Less than 26 feet long; and
 - (b) Not being used to carry persons or property for a charge;
- (3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;
- (4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft; or
- (5) "Bodily injury" or "property damage" arising out of:
 - (a) The operation of machinery or equipment that is attached to, or part of, a land vehicle that would qualify under the definition of "mobile equipment" if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged; or
 - (b) the operation of any of the machinery or equipment listed in Paragraph f.(2) or f.(3) of the definition of "mobile equipment".

h. Mobile Equipment

"Bodily injury" or "property damage" arising out of:

- (1) The transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any insured; or
- (2) The use of "mobile equipment" in, or while in practice for, or while being prepared for, any prearranged racing, speed, demolition, or stunt-ing activity.

i. War

"Bodily injury" or "property damage", however caused, arising, directly or indirectly, out of:

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

j. Damage To Property

"Property damage" to:

- (1) Property you own, rent, or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
- (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
- (3) Property loaned to you;
- (4) Personal property in the care, custody or control of the insured;
- (5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or
- (6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire) to premises, including the contents of such premises, rented to you for a period of 7 or fewer consecutive days. A separate limit of insurance applies to Damage To Premises Rented To You as described in Section III – Limits Of Insurance.

Paragraph (2) of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraph (6) of this exclusion does not apply to "property damage" included in the "products-completed operations hazard".

k. Damage To Your Product

"Property damage" to "your product" arising out of it or any part of it.

l. Damage To Your Work

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

m. Damage To Impaired Property Or Property Not Physically Injured

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or

(2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

n. Recall Of Products, Work Or Impaired Property

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- (1) "Your product";
- (2) "Your work"; or
- (3) "Impaired property";

if such product, work, or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

o. Personal And Advertising Injury

"Bodily injury" arising out of "personal and advertising injury".

p. Electronic Data

Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data.

As used in this exclusion, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

q. Distribution Of Material In Violation Of Statutes

"Bodily injury" or "property damage" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- (1) The Telephone Consumer Protection Act

(TCPA), including any amendment of or addition to such law; or

- (2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law; or
- (3) Any statute, ordinance or regulation, other than the TCPA or CAN-SPAM Act of 2003, that prohibits or limits the sending, transmitting, communicating or distribution of material or information.

Exclusions c. through n. do not apply to damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to this coverage as described in Section III – Limits Of Insurance.

COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY

1. Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "personal and advertising injury" to which this insurance does not apply. We may, at our discretion, investigate any offense and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section III – Limits Of Insurance; and
- (2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages A and B.

- b. This insurance applies to "personal and advertising injury" caused by an offense arising out of your business but only if the offense was committed in the "coverage territory" during the policy period.

2. Exclusions

This insurance does not apply to:

a. Knowing Violation Of Rights Of Another

"Personal and advertising injury" caused by or at the direction of the insured with the knowledge that the act would violate the rights of another and would inflict "personal and advertising injury".

b. Material Published With Knowledge Of Falsity

"Personal and advertising injury" arising out of oral or written publication of material, if done by or at

the direction of the insured with knowledge of its falsity.

c. Material Published Prior To Policy Period

"Personal and advertising injury" arising out of oral or written publication of material whose first publication took place before the beginning of the policy period.

d. Criminal Acts

"Personal and advertising injury" arising out of a criminal act committed by or at the direction of the insured.

e. Contractual Liability

"Personal and advertising injury" for which the insured has assumed liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement.

f. Breach Of Contract

"Personal and advertising injury" arising out of a breach of contract, except an implied contract to use another's advertising idea in your "advertisement".

g. Quality Or Performance Of Goods – Failure To Conform To Statements

"Personal and advertising injury" arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement".

h. Wrong Description Of Prices

"Personal and advertising injury" arising out of the wrong description of the price of goods, products or services stated in your "advertisement".

i. Infringement Of Copyright, Patent, Trademark Or Trade Secret

"Personal and advertising injury" arising out of the infringement of copyright, patent, trademark, trade secret or other intellectual property rights. Under this exclusion, such other intellectual property rights do not include the use of another's advertising idea in your "advertisement".

However, this exclusion does not apply to infringement, in your "advertisement", of copyright, trade dress or slogan.

j. Insureds In Media And Internet Type Businesses

"Personal and advertising injury" committed by an insured whose business is:

- (1) Advertising, broadcasting, publishing or telecasting;
- (2) Designing or determining content of web-sites for others; or
- (3) An Internet search, access, content or service provider.

However, this exclusion does not apply to Paragraphs 14.a., b. and c. of "personal and advertising injury" under the Definitions Section.

For the purposes of this exclusion, the placing of frames, borders or links, or advertising, for you or others anywhere on the Internet, is not by itself, considered the business of advertising, broadcasting, publishing or telecasting.

k. Electronic Chatrooms Or Bulletin Boards

"Personal and advertising injury" arising out of an electronic chatroom or bulletin board the insured hosts, owns, or over which the insured exercises control.

l. Unauthorized Use Of Another's Name Or Product

"Personal and advertising injury" arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatag, or any other similar tactics to mislead another's potential customers.

m. Pollution

"Personal and advertising injury" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time.

n. Pollution-Related

Any loss, cost or expense arising out of any:

- (1) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
- (2) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

o. War

"Personal and advertising injury", however caused, arising, directly or indirectly, out of:

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

p. Distribution Of Material In Violation Of Statutes

"Personal and advertising injury" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- (1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law; or
- (2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law; or
- (3) Any statute, ordinance or regulation, other than the TCPA or CAN-SPAM Act of 2003, that prohibits or limits the sending, transmitting, communicating or distribution of material or information.

COVERAGE C MEDICAL PAYMENTS

1. Insuring Agreement

- a. We will pay medical expenses as described below for "bodily injury" caused by an accident:

- (1) On premises you own or rent;
- (2) On ways next to premises you own or rent; or
- (3) Because of your operations;

provided that:

- (a) The accident takes place in the "coverage territory" and during the policy period;
- (b) The expenses are incurred and reported to us within one year of the date of the accident; and
- (c) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.

- b. We will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance. We will pay reasonable expenses for:

- (1) First aid administered at the time of an accident;
- (2) Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and
- (3) Necessary ambulance, hospital, professional nursing and funeral services.

2. Exclusions

We will not pay expenses for "bodily injury":

a. Any Insured

To any insured, except "volunteer workers".

b. Hired Person

To a person hired to do work for or on behalf of any insured or a tenant of any insured.

c. Injury On Normally Occupied Premises

To a person injured on that part of premises you own or rent that the person normally occupies.

d. Workers Compensation And Similar Laws

To a person, whether or not an "employee" of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers' compensation or disability benefits law or a similar law.

e. Athletics Activities

To a person injured while practicing, instructing or participating in any physical exercises or games, sports, or athletic contests.

f. Products-Completed Operations Hazard

Included within the "products-completed operations hazard".

g. Coverage A Exclusions

Excluded under Coverage A.

SUPPLEMENTARY PAYMENTS – COVERAGES A AND B

1. We will pay, with respect to any claim we investigate or settle, or any "suit" against an insured we defend:

- a. All expenses we incur.
- b. Up to \$250 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.
- c. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
- d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$250 a day because of time off from work.
- e. All court costs taxed against the insured in the "suit". However, these payments do not include attorneys' fees or attorneys' expenses taxed against the insured.
- f. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
- g. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

These payments will not reduce the limits of insurance.

2. If we defend an insured against a "suit" and an indemnitee of the insured is also named as a party to the "suit", we will defend that indemnitee if all of the following conditions are met:

- a. The "suit" against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";
- b. This insurance applies to such liability assumed by the insured;
- c. The obligation to defend, or the cost of the defense

of, that indemnitee, has also been assumed by the insured in the same "insured contract";

- d. The allegations in the "suit" and the information we know about the "occurrence" are such that no conflict appears to exist between the interests of the insured and the interests of the indemnitee;
- e. The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such "suit" and agree that we can assign the same counsel to defend the insured and the indemnitee; and
- f. The indemnitee:

(1) Agrees in writing to:

- (a) Cooperate with us in the investigation, settlement or defense of the "suit";
- (b) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";
- (c) Notify any other insurer whose coverage is available to the indemnitee; and
- (d) Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and

(2) Provides us with written authorization to:

- (a) Obtain records and other information related to the "suit"; and
- (b) Conduct and control the defense of the indemnitee in such "suit".

So long as the above conditions are met, attorneys' fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments. Notwithstanding the provisions of Paragraph 2.b.(2) of Section I – Coverage A – Bodily Injury And Property Damage Liability, such payments will not be deemed to be damages for "bodily injury" and "property damage" and will not reduce the limits of insurance.

Our obligation to defend an insured's indemnitee and to pay for attorneys' fees and necessary litigation expenses as Supplementary Payments ends when we have used up the applicable limit of insurance in the payment of judgments or settlements or the conditions set forth above, or the terms of the agreement described in Paragraph f. above, are no longer met.

SECTION II – WHO IS AN INSURED

1. If you are designated in the Declarations as:

- a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
- b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the con-

duct of your business.

- c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
 - d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
 - e. A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.
2. Each of the following is also an insured:
- a. Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, none of these "employees" or "volunteer workers" are insureds for:
 - (1) "Bodily injury" or "personal and advertising injury":
 - (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;
 - (b) To the spouse, child, parent, brother or sister of that co-"employee" or "volunteer worker" as a consequence of Paragraph (1)(a) above;
 - (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs (1)(a) or (b) above; or
 - (d) Arising out of his or her providing or failing to provide professional health care services.
 - (2) "Property damage" to property:
 - (a) Owned, occupied or used by,
 - (b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by
- you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you

are a limited liability company).

- b. Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.
 - c. Any person or organization having proper temporary custody of your property if you die, but only:
 - (1) With respect to liability arising out of the maintenance or use of that property; and
 - (2) Until your legal representative has been appointed.
 - d. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Part.
3. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:
- a. Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier;
 - b. Coverage A does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
 - c. Coverage B does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

SECTION III – LIMITS OF INSURANCE

1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
- a. Insureds;
 - b. Claims made or "suits" brought; or
 - c. Persons or organizations making claims or bringing "suits".
2. The General Aggregate Limit is the most we will pay for the sum of:
- a. Medical expenses under Coverage C;
 - b. Damages under Coverage A, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; and
 - c. Damages under Coverage B.
3. The Products-Completed Operations Aggregate Limit is the most we will pay under Coverage A for damages because of "bodily injury" and "property damage"

included in the "products-completed operations hazard".

4. Subject to Paragraph 2. above, the Personal and Advertising Injury Limit is the most we will pay under Coverage B for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization.
5. Subject to Paragraph 2. or 3. above, whichever applies, the Each Occurrence Limit is the most we will pay for the sum of:
 - a. Damages under Coverage A; and
 - b. Medical expenses under Coverage Cbecause of all "bodily injury" and "property damage" arising out of any one "occurrence".
6. Subject to Paragraph 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage A for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, while rented to you or temporarily occupied by you with permission of the owner.
7. Subject to Paragraph 5. above, the Medical Expense Limit is the most we will pay under Coverage C for all medical expenses because of "bodily injury" sustained by any one person.

The Limits of Insurance of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS

1. Bankruptcy

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

2. Duties In The Event Of Occurrence, Offense, Claim Or Suit

- a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:
 - (1) How, when and where the "occurrence" or offense took place;
 - (2) The names and addresses of any injured persons and witnesses; and
 - (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.
- b. If a claim is made or "suit" is brought against any insured, you must:

- (1) Immediately record the specifics of the claim or "suit" and the date received; and

- (2) Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or "suit" as soon as practicable.

c. You and any other involved insured must:

- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
- (2) Authorize us to obtain records and other information;
- (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and
- (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.

- d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

3. Legal Action Against Us

No person or organization has a right under this Coverage Part:

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- b. To sue us on this Coverage Part unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this Coverage Part or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

4. Other Insurance

If other valid and collectible insurance is available to the insured for a loss we cover under Coverages A or B of this Coverage Part, our obligations are limited as follows:

a. Primary Insurance

This insurance is primary except when Paragraph b. below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in Paragraph c. below.

b. Excess Insurance

- (1) This insurance is excess over:
 - (a) Any of the other insurance, whether primary, excess, contingent or on any other

basis:

- (i) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";
 - (ii) That is Fire insurance for premises rented to you or temporarily occupied by you with permission of the owner;
 - (iii) That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner; or
 - (iv) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion g. of Section I – Coverage A – Bodily Injury And Property Damage Liability.
- (b) Any other primary insurance available to you covering liability for damages arising out of the premises or operations, or the products and completed operations, for which you have been added as an additional insured by attachment of an endorsement.
- (2) When this insurance is excess, we will have no duty under Coverages A or B to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.
- (3) When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:
- (a) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
 - (b) The total of all deductible and self-insured amounts under all that other insurance.
- (4) We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

c. Method Of Sharing

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

5. Premium Audit

- a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.
- b. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period and send notice to the first Named Insured. The due date for audit and retrospective premiums is the date shown as the due date on the bill. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.
- c. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

6. Representations

By accepting this policy, you agree:

- a. The statements in the Declarations are accurate and complete;
- b. Those statements are based upon representations you made to us; and
- c. We have issued this policy in reliance upon your representations.

7. Separation Of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom claim is made or "suit" is brought.

8. Transfer Of Rights Of Recovery Against Others To Us

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

9. When We Do Not Renew

If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

SECTION V – DEFINITIONS

- 1. "Advertisement" means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For the

purposes of this definition:

- a. Notices that are published include material placed on the Internet or on similar electronic means of communication; and
 - b. Regarding web-sites, only that part of a web-site that is about your goods, products or services for the purposes of attracting customers or supporters is considered an advertisement.
2. "Auto" means:
- a. A land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment; or
 - b. Any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged.
- However, "auto" does not include "mobile equipment".
3. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.
4. "Coverage territory" means:
- a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
 - b. International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in Paragraph a. above; or
 - c. All other parts of the world if the injury or damage arises out of:
 - (1) Goods or products made or sold by you in the territory described in Paragraph a. above;
 - (2) The activities of a person whose home is in the territory described in Paragraph a. above, but is away for a short time on your business; or
 - (3) "Personal and advertising injury" offenses that take place through the Internet or similar electronic means of communication
- provided the insured's responsibility to pay damages is determined in a "suit" on the merits, in the territory described in Paragraph a. above or in a settlement we agree to.
5. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
6. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.
7. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.
8. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:
- a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or

- b. You have failed to fulfill the terms of a contract or agreement;

if such property can be restored to use by the repair, replacement, adjustment or removal of "your product" or "your work" or your fulfilling the terms of the contract or agreement.

9. "Insured contract" means:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
- b. A sidetrack agreement;
- c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
- d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement;
- f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph f. does not include that part of any contract or agreement:

- (1) That indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing;
 - (2) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
 - (a) Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
 - (3) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (2) above and supervisory, inspection, architectural or engineering activities.
10. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you

and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".

11. "Loading or unloading" means the handling of property:

- a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
 - b. While it is in or on an aircraft, watercraft or "auto"; or
 - c. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;
- but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".

12. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:

- a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
 - b. Vehicles maintained for use solely on or next to premises you own or rent;
 - c. Vehicles that travel on crawler treads;
 - d. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
 - (1) Power cranes, shovels, loaders, diggers or drills; or
 - (2) Road construction or resurfacing equipment such as graders, scrapers or rollers;
 - e. Vehicles not described in Paragraph a., b., c. or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
 - (1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
 - (2) Cherry pickers and similar devices used to raise or lower workers;
 - f. Vehicles not described in Paragraph a., b., c. or d. above maintained primarily for purposes other than the transportation of persons or cargo.
- However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":
- (1) Equipment designed primarily for:
 - (a) Snow removal;
 - (b) Road maintenance, but not construction or resurfacing; or
 - (c) Street cleaning;
 - (2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and

- (3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

However, "mobile equipment" does not include any land vehicles that are subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law are considered "autos".

13. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

14. "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:

- a. False arrest, detention or imprisonment;
- b. Malicious prosecution;
- c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;
- d. Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
- e. Oral or written publication, in any manner, of material that violates a person's right of privacy;
- f. The use of another's advertising idea in your "advertisement"; or
- g. Infringing upon another's copyright, trade dress or slogan in your "advertisement".

15. "Pollutants" mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

16. "Products-completed operations hazard":

- a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:
 - (1) Products that are still in your physical possession; or
 - (2) Work that has not yet been completed or abandoned. However, "your work" will be deemed completed at the earliest of the following times:
 - (a) When all of the work called for in your contract has been completed.
 - (b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.
 - (c) When that part of the work done at a job site has been put to its intended use by any per-

son or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

- b. Does not include "bodily injury" or "property damage" arising out of:

- (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured;
- (2) The existence of tools, uninstalled equipment or abandoned or unused materials; or
- (3) Products or operations for which the classification, listed in the Declarations or in a policy schedule, states that products-completed operations are subject to the General Aggregate Limit.

17. "Property damage" means:

- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
- b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.

For the purposes of this insurance, electronic data is not tangible property.

As used in this definition, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

18. "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies are alleged. "Suit" includes:

- a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
- b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which

the insured submits with our consent.

19. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.

20. "Volunteer worker" means a person who is not your "employee", and who donates his or her work and acts at the direction of and within the scope of duties determined by you, and is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.

21. "Your product":

a. Means:

- (1) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
 - (a) You;
 - (b) Others trading under your name; or
 - (c) A person or organization whose business or assets you have acquired; and
- (2) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

b. Includes:

- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and
- (2) The providing of or failure to provide warnings or instructions.

c. Does not include vending machines or other property rented to or located for the use of others but not sold.

22. "Your work":

a. Means:

- (1) Work or operations performed by you or on your behalf; and
- (2) Materials, parts or equipment furnished in connection with such work or operations.

b. Includes:

- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work", and
- (2) The providing of or failure to provide warnings or instructions.

EXHIBIT B

CERTIFIED POLICY

This certification is affixed to a policy which is a true and accurate copy of the document in the company's business records as of the date shown below.

No additional insurance is afforded by this copy.

St. Paul Fire and Marine Insurance Company

Name of Insuring Company(ies)

QK 06503290

03/01/11 to 03/01/13

04/24/18

Policy Number(s)

Policy Period(s)

Date



Kenneth Kupec, Second Vice President
BI Document Management



DECLARATIONS

St. Paul Fire and Marine Insurance Company

2 JERICHO PLAZA
JERICHO NY 11753

Item 1. Named Insured: PREMIER HOTEL INSURANCE GROUP (P2)
Address: "A RISK PURCHASING GROUP"
10900 NE 4TH STREET
SUITE 1100
BELLEVUE WA 98004

Item 2. Policy Period: From: 03/01/2011 To: 03/01/2013
At 12:01 A.M. Standard Time at the address of the Named Insured shown above

Item 3. Limits Of Insurance

The Limits Of Insurance, subject to all the terms of this policy, are:

- A. \$25,000,000 Each occurrence
B. \$100,000,000 General aggregate (in accordance with Section III, Limits Of Insurance)
C. \$25,000,000 Products-Completed Operations aggregate (in accordance with Section III, Limits Of Insurance)

Item 4. Self Insured Retention \$0

Item 5. Premium: \$TBD
Surcharge/Surtax:

Rate, if applicable:

Minimum premium,
if applicable: \$

Item 6. Agent: NATIONAL SPECIALTY UNDERWRITERS
10900 NE 4TH STREET
SUITE 1100
BELLEVUE WA 98004

Agency Number: 4601026

Item 7. Endorsements attached: See attached schedule.

Item 8. Policy Number: QK06503290
This Replaces Policy Number: QK06502174

Brian MacLean
President

Wendy C. Skj
Secretary

SU089 Ed. 3-03

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AA01093

POLICY FORM LIST

Here's a list of all forms included in your policy, on the date shown below. These forms are listed in the same order as they appear in your policy.

Title	Form Number	Edition Date
Disclosure Notice Terrorism Risk Insurance Act Of 2002	D0100	03-09
Declarations (St. Paul Fire and Marine Insurance Company)	SU089	03-03
Policy Form List	40705	05-84
What To Do If You Have A Loss - Specialty Commercial Umbrella Liability Policy	SU106	05-03
Specialty Commercial Umbrella Liability Policy	SU001	10-02
Amendment of Cancellation Notice	SU007	10-02
Claims-Made Coverage And Extended Reporting Period Endorsement	SU015	06-08
Anti-Stacking Endorsement	SUP028	02-10
Pollution Exclusion Exception For Certain Equipment Including Pollutants From Swimming Pools And Garages	SUP029	02-10
Employee Benefit Liability Endorsement	SU035	06-08
Lead Exclusion	SU050	10-02
Mold or Other Fungi or Bacteria Exclusion	SU061	10-02
Pesticide, Herbicide or Fertilizer Applications Endorsement	SU070	10-02
Waiver of Rights of Recovery Endorsement	SU085	10-02
Scheduled Retained Limits	SU091	03-03
Scheduled Underlying Insurance	SU109	08-08
Scheduled Underlying Insurance - Continued	SU110	03-03
Silica Exclusion	SU157	08-04
Washington Amendatory Endorsement	SU162	09-04
Unsolicited Communication Exclusion Endorsement	SU163	10-04
Application Of Limits Of Insurance	SU221	04-11
Auto Liability Limits of Ins. End't. - Exception for Damages Not Subj to Underlying Aggregate Limit Applies Only to Auto	SU244	10-06
Auto Liability Limitation	SU257	03-07
Garagekeepers Legal Liability	SU260	04-07
Pollution Exclusion Except Building Heating Or Air Conditioning Equipment Or Water Heating Equipment	SU267	03-07
Knowledge Of Occurrence Or Claim	SU280	12-07
Crisis Management Service Expense Endorsement	SU300	12-09
Failure To Notify Insurer Of Occurrence	SUM189	04-08

Name of Insured	Policy Number QK06503290	Effective Date 03/01/11
PREMIER HOTEL INSURANCE GROUP (P2)	Processing Date 05/03/11 13:52	001

40705 Ed. 5-84 Form List
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T000004

**DISCLOSURE NOTICE
TERRORISM RISK INSURANCE ACT OF 2002**

On December 26, 2007, the President of the United States signed into law amendments to the Terrorism Risk Insurance Act of 2002 (the "Act"), which, among other things, extend the Act and expand its scope. The Act establishes a program under which the Federal Government may partially reimburse "Insured Losses" (as defined in the Act) caused by "acts of terrorism". An "act of terrorism" is defined in Section 102(l) of the Act to mean any act that is certified by the Secretary of the Treasury - in concurrence with the Secretary of State and the Attorney General of the United States - to be an act of terrorism; to be a violent act or an act that is dangerous to human life, property, or infrastructure; to have resulted in damage within the United States, or outside the United States in the case of certain air carriers or vessels or the premises of a United States Mission; and to have been committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

The federal government's share of compensation for Insured Losses is 85% of the amount of Insured Losses in excess of each Insurer's statutorily established deductible, subject to the "Program Trigger", (as defined in the Act). In no event, however, will the federal government or any Insurer be required to pay any portion of the amount of aggregate Insured Losses occurring in any one year that exceeds \$100,000,000,000, provided that such Insurer has met its deductible. If aggregate Insured Losses exceed \$100,000,000,000 in any one year, your coverage may therefore be reduced.

The premium charge shown below is for coverage under this policy for Insured losses covered by the Act. This terrorism premium does not include any charges for the portion of insured losses covered by the federal government under the Act.

If \$0 is shown below for the certified acts of terrorism premium charge, this policy provides such terrorism coverage for no premium charge.

The certified acts of terrorism premium charge shown below applies to all coverage under this policy for Insured Losses covered by the Act that you purchased for a premium charge. For any insuring agreement or coverage part for which you did not purchase such terrorism coverage, this policy may include one or more terrorism exclusions that apply to certified acts of terrorism. Under the federal Terrorism Risk Insurance Program Reauthorization Act of 2007, the applicable definition of certified acts of terrorism no longer requires that the act of terrorism be committed on behalf of a foreign person or foreign interest. Therefore, each such exclusion is not limited to an act of terrorism committed on behalf of a foreign person or interest.

Name of Insured: PREMIER HOTEL INSURANCE GROUP (P2)

Policy Number: QK06503290

Effective Date: 03/01/11

Certified Acts Of Terrorism Premium Charge: INCLUDED

Processing Date: 05/03/11 13:52 001

What To Do If You Have A Loss - Specialty Commercial Umbrella Liability Policy

When an Occurrence happens or is committed that will likely result in damages that are covered by this policy, you or any Insured covered under this policy are required to report the claim to:

The Travelers Companies, Inc.
Attn: Travelers Excess Casualty Claim Division
Mail Code 9275-NB08E
385 Washington Street
St. Paul, MN 55102-1396

All other terms of your policy remain the same.

Specialty Commercial Umbrella Liability Policy

This is a Commercial Umbrella Liability Policy Form. It specifies the coverage provided, restrictions or exclusions to that coverage, and the rights and duties under this contract.

Throughout this policy the words "you" and "your" refer to the Named Insured. The word "Named Insured" and all other words or phrases that appear in bold, other than bold used for titles, have or include special meaning as described in this form. The words "we", "us" and "our" refer to the Company indicated in the Declarations as providing this insurance.

In consideration of the payment of the premium and in reliance upon the statements in the Declarations we agree with you as follows:

Insuring Agreements

I. Coverage

A. We will pay on behalf of:

1. the Insured all sums in excess of the Retained Limit that the Insured becomes legally obligated to pay as damages by reason of liability imposed by law; or
2. the Named Insured all sums in excess of the Retained Limit that the Named Insured becomes legally obligated to pay as damages assumed by the Named Insured under an Insured Contract;

because of:

1. Bodily Injury or Property Damage that occurs during the Policy Period and is caused by an Occurrence; or
2. Personal Injury or Advertising Injury that is caused by an Occurrence committed during the Policy Period;

if such Occurrence takes place anywhere in the world, except for any country or jurisdiction which is subject to any trade sanction, embargo or similar regulation imposed by the United States of America that prohibits the transaction of business with or within such country or jurisdiction.

If we are prevented by law or statute from paying such sums on behalf of any Insured, then we will, where permitted by law or statute, indemnify that Insured for such sums in excess of the Retained Limit. In any event, the amount we will pay for damages is limited as described in Section III. Limits of Insurance.

There is no coverage under this policy for Bodily Injury, Property Damage, Personal Injury or Advertising Injury unless a Retained Limit applies.

B. Retained Limit means the greater of the following:

1. the total of the applicable limits of all Scheduled Underlying Insurance, and the applicable limits of any Other Insurance, for Bodily Injury, Property Damage, Personal Injury or Advertising Injury covered by such Scheduled Underlying Insurance or Other Insurance;
2. the total of the applicable limits of all Scheduled Retained Limits for Bodily Injury, Property Damage, Personal Injury or Advertising Injury covered by such Scheduled Retained Limits; or
3. if applicable, the amount stated in the Declarations as a Self Insured Retention because of any Bodily Injury, Property Damage, Personal Injury or Advertising Injury not covered by either any Scheduled Underlying Insurance or any Scheduled Retained Limit, and caused by any one Occurrence.

- C. If coverage for the Bodily Injury, Property Damage, Personal Injury or Advertising Injury does not exist under any:

1. Scheduled Underlying Insurance; or
2. Scheduled Retained Limit;

because of a specific exclusion or other specific coverage limitation, then paragraph I. Coverage B.3 above does not apply, unless such coverage is specifically provided by endorsement to this policy.

- D. This insurance applies to Bodily Injury and Property Damage only if no Named Insured knew, prior to the Policy Period, that the Bodily Injury or Property Damage had occurred, in whole or in part. If a Named Insured knew, prior to the Policy Period, that the Bodily Injury or Property Damage had occurred, then any continuation, change or resumption of such Bodily Injury or Property Damage during or after the Policy Period will be considered to have been known by a Named Insured prior to the Policy Period if such continuation, change or resumption would otherwise be covered by this policy because of a continuous, multiple or other coverage trigger required under the law that applies.

Bodily Injury or Property Damage which occurs during the Policy Period and was not, prior to the Policy Period, known to have occurred by any Named Insured includes any continuation, change or resumption of that Bodily Injury or Property Damage after the end of the Policy Period if that would be the result because of a continuous, multiple or other coverage trigger required under the law that applies.

Bodily Injury or Property Damage will be considered to have been known to have occurred at the earliest time when any Named Insured:

1. reports all, or any part, of the Bodily Injury or Property Damage to us or any other insurer;
2. receives a written or verbal demand or Claim for damages because of the Bodily Injury or Property Damage; or
3. becomes aware by any means that the Bodily Injury or Property Damage has occurred or has begun to occur.

- E. Solely for the purpose of liability assumed by the Named Insured under an Insured Contract, reasonable attorney's fees and necessary litigation expenses incurred by or for a party other than an Insured are deemed to be damages because of Bodily Injury, Property Damage, Personal Injury or Advertising Injury, provided:

1. liability to such party for such attorney's fees and necessary litigation expense has also been assumed by the Named Insured in the same Insured Contract; and
2. such attorney's fees and litigation expenses are for defense of such party against a Suit seeking damages covered by this policy.

- F. If any Scheduled Underlying Insurance has a limit of insurance greater than the amount shown in the Schedule of Underlying Insurance, this policy will apply in excess of that greater amount. If any Scheduled Underlying Insurance has a limit of insurance, prior to any reduction or exhaustion by payment of one or more Claims or Suits seeking damages that would be covered under this policy, that is less than the amount shown in the Schedule of Underlying Insurance, this policy will apply in excess of the amount shown in that schedule.

If any Scheduled Retained Limit has a limit of insurance greater than the amount shown in the Schedule of Retained Limits, this policy will apply in excess of that greater amount. If any Scheduled Retained Limit has a limit of insurance, prior to any reduction or exhaustion by payment of one or more Claims or Suits seeking damages that would be covered under this policy, that is less than the amount shown in the Schedule of Retained Limits, this policy will apply in excess of the amount shown in that schedule.

G. If the total of the applicable limits of any Scheduled Underlying Insurance or any Scheduled Retained Limit are reduced or exhausted by payment of one or more Claims or Suits seeking damages that would be covered by this policy, we will:

1. in the event of reduction of the limits of the Scheduled Underlying Insurance or the Scheduled Retained Limit, pay in excess of such reduced limits; or
2. in the event of exhaustion of the limits of the Scheduled Underlying Insurance or the Scheduled Retained Limit, continue in force as underlying insurance upon such exhaustion;

and subject to any specific exclusions or other specific coverage limitations of that Scheduled Underlying Insurance or Scheduled Retained Limit.

H. The applicable limits of any Scheduled Underlying Insurance or Scheduled Retained Limit shall not, for the purpose of determining when this policy applies, be reduced or exhausted by any payment with respect to Claims or Suits seeking damages which are not covered by this policy.

II. Defense

A. We shall have the right and duty to assume control of the defense of any Claim or Suit seeking damages covered by this policy, and we shall have the right to investigate and settle such Claim or Suit, when the Retained Limit has been exhausted by payment of judgments or settlements that would be covered by this policy. These rights and duties apply even if the Claim or Suit is groundless, false or fraudulent.

B. Prior to the exhaustion of the Retained Limit we shall have the right, but not the duty, to participate in the investigation, settlement or defense of any Claim or Suit seeking damages that would be covered by this policy. This right includes the opportunity to participate in the defense of any Claim or Suit that may result in damages covered by this policy. If we exercise this right, we will do so at our own expense.

C. We have no duty to defend, investigate or settle any Claim or Suit seeking damages not covered by this policy.

D. We will not defend any Claim or Suit after the applicable limits of insurance under this policy have been exhausted by payment of judgments or settlements.

E. All expenses we incur in the defense of any Claim or Suit are in addition to the limits of insurance under this policy.

F. When we assume the defense of any Claim or Suit we will pay the following, to the extent that they are not included in the Scheduled Underlying Insurance, Scheduled Retained Limits or in any Other Insurance:

1. premiums on bonds to release attachments for amounts not exceeding our limits of insurance, but we are not obligated to apply for or furnish any such bond;
2. premiums on appeal bonds required by law to appeal any Claim or Suit we defend, but we are not obligated to apply for or furnish any such bond;
3. all costs taxed against the Insured for Bodily Injury, Property Damage, Personal Injury or Advertising Injury, covered by this policy, in any Suit we defend;
4. pre-judgment interest awarded against the Insured on that part of the judgment we pay. But if we make an offer to pay the applicable limit of insurance, we will not pay any pre-judgment interest based on that period of time after the offer;
5. all interest that accrues after entry of judgment and before we have paid, offered to pay or deposited in court the part of the judgment that is within the applicable limit of insurance under this policy; and

6. the Insured's reasonable expenses incurred at our request.

- G. When we have the duty to defend, but are prevented by law or otherwise from performing that duty, the Insured shall make or arrange for any necessary investigation or defense. We will reimburse the Insured for the reasonable and necessary expenses incurred to provide that investigation or defense, subject to the terms and conditions of this policy.

III. Limits Of Insurance

- A. The limits of insurance stated in Item 3 of the Declarations and the rules below establish the most we will pay regardless of the number of:

1. Insureds;
2. Claims made or Suits brought;
3. person or organizations making Claims or bringing Suits; or
4. coverages provided under this policy.

- B. The General Aggregate Limit is the most we will pay for all damages covered under Insuring Agreement I. Coverage except for:

1. damages included in the Products - Completed Operations Hazard; and
2. coverages included in the Scheduled Underlying Insurance or Scheduled Retained Limits to which no underlying aggregate applies.

If any Scheduled Underlying Insurance or any Scheduled Retained Limit contains aggregate limits, other than an aggregate applying to the Products-Completed Operations Hazard, the General Aggregate stated in the Declarations will apply in the same manner as the aggregate limits of each Scheduled Underlying Insurance or each Scheduled Retained Limit.

- C. The Products - Completed Operations Aggregate Limit is the most we will pay for all damages included in the Products - Completed Operations Hazard.
- D. Subject to B. and C. above, the Each Occurrence Limit is the most we will pay for all damages covered under Insuring Agreement I. Coverage because of all Bodily Injury, Property Damage, Personal Injury and Advertising Injury caused by any one Occurrence.
- E. The limits of insurance of this policy apply separately to each consecutive annual period and to any remaining period of less than twelve months, starting with the beginning of the Policy Period shown in the Declarations. If, however, the Policy Period is extended after issuance for an additional period of less than 12 months, the additional period will be considered part of the last preceding period for purposes of determining the limits of insurance that apply.

IV. Definitions

- A. **Advertisement** means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For purposes of this definition:
1. notices that are published include material placed on the Internet or similar electronic means of communication;
 2. only that part of your website that is about your goods, products or services for the purpose of attracting customers or supporters is considered an Advertisement; and

3. the placing of advertising, borders or frames for you or others, or links for or to others, on or in your website is not considered an Advertisement.
- B. **Advertising Idea** means a manner or style of Advertisement that others use and intend to attract attention in their Advertisement. However, information used to identify or record customers or supporters, such as a list of customers or supporters, shall not be considered to be an Advertising Idea.
- C. **Advertising Injury** means injury, other than Bodily Injury or Personal Injury, arising out of your business and caused by one or more of the following offenses:
1. oral, written or electronic publication of material in your Advertisement that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
 2. oral, written or electronic publication of material in your Advertisement that violates a person's right of privacy;
 3. unauthorized use in your Advertisement of another's Advertising Idea; or
 4. infringement in your Advertisement of another's copyright, trade dress, or Slogan.
- D. **Auto** means a land motor vehicle, trailer or semi-trailer designed for travel on public roads, including any attached machinery or equipment. But Auto does not include Mobile Equipment.
- E. **Bodily Injury** means any physical harm, sickness or disease to the physical health of other persons, including death or any of the following resulting at any time from such physical harm, sickness or disease:
1. mental injury;
 2. mental anguish;
 3. emotional distress;
 4. shock; or
 5. humiliation.
- F. **Claim** means a demand that seeks damages.
- G. **Employee** includes any person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. However, Employee does not include any person who is furnished to you to substitute for a permanent Employee on leave or to meet seasonal or short-term workload conditions.
- H. **Hostile Fire** means a fire which becomes uncontrollable or breaks out from where it was intended to be.
- I. **Impaired Property** means Tangible Property, other than Your Product or Your Work, that cannot be used or is less useful because:
1. it incorporates Your Product or Your Work that is known or thought to be defective, deficient, inadequate or dangerous; or
 2. you have, or anyone acting on your behalf has, failed to fulfill the terms of a contract or agreement; if such property can be restored to use by:
 1. the repair, replacement, adjustment or removal of Your Product or Your Work; or
 2. you, or anyone acting on your behalf, fulfilling the terms of the contract or agreement.
- As used in this definition, Tangible Property does not include data.

J. **Insured** means each of the following, to the extent set forth:

1. the **Named Insured**;
2. any person or organization, other than the **Named Insured**, included as an additional insured in any **Scheduled Underlying Insurance** but then for no broader coverage than is provided to such person or organization under such **Scheduled Underlying Insurance**;
3. any of your **Employees**, other than:
 - a. your managers if you are a limited liability company; or
 - b. your executive officers if you are an organization other than a partnership, joint venture or limited liability company;

but only for acts within the scope of their employment by you while performing duties related to the conduct of your business.

However, no person or organization is an **Insured** under this paragraph IV.J.3. for the ownership, maintenance, operation, use, Loading or Unloading, or entrustment to others, of any Autos, aircraft or watercraft unless such coverage is included under the **Scheduled Underlying Insurance** and then for no broader coverage than is provided under such **Scheduled Underlying Insurance**.

4. any person, other than any of your **Employees**, or organization while acting as your real estate manager;
5. any person, organization, trustee or estate to whom you are obligated by a written contract or agreement to provide insurance such as is afforded by this policy but only with respect to liability arising out of:
 - a. Your Work; or
 - b. facilities owned or used by you.
6. any person (other than any of your partners or co-venturers if you are a partnership or joint venture, any of your members or managers if you are a limited liability company, or any of your executive officers, directors or stockholders if you are an organization other than a partnership, joint venture or limited liability company, or any of your **Employees**) or organization with respect to any Auto:
 - a. owned by you, loaned to you or hired by you or on your behalf; and
 - b. used by that person or organization with your permission.

However, none of the following is an **Insured** under this paragraph IV.J.6.:

- a. the owner or anyone else from whom you hire or borrow an Auto. But this exception does not apply if the Auto is a trailer or semi-trailer connected to an Auto you own; or
- b. any person using an Auto while working in a business that sells, services, repairs or parks Autos unless you are in that business.

K. **Insured Contract** means that part of any contract or agreement pertaining to your business under which the **Named Insured** assumes the Tort Liability of another party to pay for **Bodily Injury**, **Property Damage**, **Personal Injury** or **Advertising Injury** to a third person or organization, but only if:

1. the **Bodily Injury** or **Property Damage** occurs; or
2. the **Personal Injury** or **Advertising Injury** is caused by an Occurrence committed;

subsequent to the execution of the **Insured Contract**.

L. Loading or Unloading means the handling of property:

1. while it is being moved from the place where it is accepted for transportation;
2. while it is being loaded, transported or unloaded; and
3. until it is moved to the place where it is finally delivered.

M. Mobile Equipment means any of the following types of land vehicles, including any attached machinery or equipment:

1. bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
2. vehicles maintained for use solely on or next to premises you own or rent;
3. vehicles that travel on crawler treads;
4. vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
 - a. power cranes, shovels, loaders, diggers or drills; or
 - b. road construction or resurfacing equipment such as graders, scrapers or rollers;
5. vehicles not described in paragraphs IV.M.1., 2., 3. or 4. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
 - a. air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
 - b. cherry pickers and similar devices used to raise or lower workers; and
6. vehicles not described in IV.M.1., 2., 3. or 4. above maintained primarily for purposes other than the transportation of persons or cargo.

However, self-propelled vehicles with the following types of permanently attached equipment are not Mobile Equipment but will be considered Autos:

- a. equipment designed primarily for:
 - 1) snow removal;
 - 2) road maintenance, but not construction or resurfacing; or
 - 3) street cleaning;
- b. cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
- c. air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

N. Named Insured means:

1. any person or organization listed in Item 1 of the Declarations, any company that is your subsidiary as of the effective date of this policy and any company in which you own a majority or controlling interest as of the effective date of this policy; and
2. any organization, other than a partnership, joint venture or limited liability company, which is newly acquired, controlled or formed by you during the Policy Period but only:
 - a. as respects Occurrences taking place after you acquire, take control of or form such organization;

- b. to the extent such organization is included under the coverage provided by any **Scheduled Underlying Insurance**;
- c. if you give us prompt notice after you acquire, take control of or form such organization; and
- d. if you own a majority or controlling interest in such organization;

We may make an additional premium charge for any such organizations you acquire, take control of or form during the **Policy Period**;

- 3. if you are an individual, you and your spouse, but only with respect to the conduct of a business of which you are the sole owner;
- 4. if you are a partnership or joint venture, your partners or co-venturers and their spouses, but only with respect to the conduct of your business;
- 5. if you are a limited liability company, your members, but only with respect to the conduct of your business, and your managers, but only with respect to their duties as your managers; and
- 6. if you are an organization other than a partnership, joint venture or limited liability company, any of your executive officers, directors or stockholders but only while acting within their duties or capacities as such;

However, no person or organization is a **Named Insured** with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a **Named Insured** in the **Declarations**.

Also, no person or organization is a **Named Insured** under paragraphs IV.N.3., 4., 5. or 6. for the ownership, maintenance, operation, use, **Loading or Unloading**, or entrustment to others, of any Autos, aircraft or watercraft unless such coverage is included under the **Scheduled Underlying Insurance** and then for no broader coverage than is provided under such **Scheduled Underlying Insurance**.

O. Occurrence means:

- 1. as respects **Bodily Injury** or **Property Damage**, an accident, including continuous or repeated exposure to substantially the same general harmful conditions, which results in **Bodily Injury** or **Property Damage**. All **Bodily Injury** or **Property Damage** caused by such exposure to substantially the same general harmful conditions shall be considered to be caused by one **Occurrence**;
- 2. as respects **Personal Injury**, an offense arising out of your business that results in **Personal Injury**. All **Personal Injury** caused by the same or related injurious material, act or offense shall be considered to be caused by one **Occurrence**, regardless of the frequency or repetition thereof, the number and kind of media used or the number of persons or organizations making **Claims** or bringing **Suits**; and
- 3. as respects **Advertising Injury**, an offense committed in the course of advertising your goods, products and services that results in **Advertising Injury**. All **Advertising Injury** caused by the same or related injurious material, act or offense shall be considered to be caused by one **Occurrence**, regardless of the frequency or repetition thereof, the number and kind of media used or the number of persons or organizations making **Claims** or bringing **Suits**.

P. Other Insurance means any insurance providing coverage for damages covered in whole or in part by this policy. Other Insurance includes alternative risk transfer, risk management or financing methods or programs, such as risk retention groups or self-insurance methods or programs. But Other Insurance does not include:

- 1. any **Scheduled Underlying Insurance**;

2. the Self-Insured Retention; or
 3. any policy of insurance specifically purchased to be excess of this policy and affording coverage that this policy also affords.
- Q. Personal Injury** means injury, other than Bodily Injury or Advertising Injury, arising out of your business and caused by one or more of the following offenses:
1. false arrest, detention or imprisonment;
 2. malicious prosecution;
 3. the wrongful eviction from, wrongful entry into or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies committed by or on behalf of its owner, landlord or lessor;
 4. oral, written or electronic publication of material that slanders or libels a person or organization, or disparages a person's or organization's goods, products or services; or
 5. oral, written or electronic publication of material that violates a person's right of privacy.
- R. Policy Period** means the period of time from the inception date shown in Item 2 of the Declarations to the earlier of the expiration date shown in Item 2 of the Declarations or the termination date of this policy.
- S. Pollutant** means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapors, soot, fumes, acids, alkalis, chemicals and Waste.
- T. Products - Completed Operations Hazard** means all Bodily Injury and Property Damage occurring away from premises you own, rent or borrow and arising out of Your Product or Your Work except:
1. products that are still in your physical possession; or
 2. work that has not yet been completed or abandoned. However, we will consider Your Work to be completed at the earliest of the following times:
 - a. when all of the work called for in your contract has been completed;
 - b. when all of the work to be done at the job site has been completed if your contract calls for work at more than one job site; or
 - c. when any person or organization, other than another contractor or subcontractor working on the same project, has put that part of the work done at a job site to its intended use.
- Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, shall be considered to be completed.
- The Products - Completed Operations Hazard does not include Bodily Injury or Property Damage arising out of:
1. the transportation of property, unless the Bodily Injury or Property Damage arises out of a condition in or on a vehicle created by the Loading or Unloading of that vehicle by an Insured; or
 2. the existence of tools, uninstalled equipment or abandoned or unused materials.
- U. Property Damage** means:
1. physical injury to Tangible Property of others including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
 2. loss of use of Tangible Property of others that is not physically injured. All such loss of use shall be deemed to occur at the time of the Occurrence that caused it.

As used in this definition, **Tangible Property** does not include data.

- V. **Scheduled Retained Limits** means the amount and type of insurance, not covered by any **Scheduled Underlying Insurance**, listed in the Schedule of Retained Limits forming a part of this policy.
- W. **Scheduled Underlying Insurance** means:
1. the policy or policies of insurance listed in the Schedule of Underlying Insurance forming a part of this policy; and
 2. automatically any renewal or replacement of any policy described in paragraph IV.W.1. above, provided that such renewal or replacement provides equivalent coverage to and affords limits of insurance equal to or greater than the policy being renewed or replaced.
- X. **Self-Insured Retention** means the amount indicated in Item 4 of the Declarations which is the maximum amount that:
1. the **Insured** becomes legally obligated to pay by reason of liability imposed by law; or
 2. the **Named Insured** becomes legally obligated to pay as damages assumed by the **Named Insured** under an **Insured Contract**;
- not covered by either any **Scheduled Underlying Insurance** or any **Scheduled Retained Limit** and caused by any one **Occurrence**.
- Y. **Slogan** means a phrase that others use and intend to attract attention in their **Advertisement**. However, a **Slogan** does not include a phrase used as, or in, the name of:
1. any person or organization, other than you; or
 2. any business or any of the premises, goods, products or services of any person or organization, other than you.
- Z. **Suit** means a civil proceeding that seeks damages. **Suit** includes:
1. an arbitration proceeding that seeks damages and to which you must submit or do submit with our consent; or
 2. any other alternative dispute resolution proceeding that seeks damages and to which you submit with our consent.
- AA. **Tort Liability** means a liability that would be imposed by law in the absence of any contract or agreement.
- BB. **Waste** includes materials which are intended to be or have been recycled, reconditioned or reclaimed.
- CC. **Your Product** means:
1. any goods or products, other than real property, that are or were manufactured, sold, handled, distributed or disposed of by:
 - a. you;
 - b. others trading under your name; or
 - c. a person or organization whose business or assets you have acquired; and
 2. containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

Your Product includes:

1. warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of Your Product; and
2. the providing of or failure to provide warnings or instructions.

Your Product does not include vending machines or other property rented to or located for the use of others but not sold.

DD. Your Work means:

1. work or operations performed or being performed by you or on your behalf; and
2. materials, parts or equipment furnished in connection with such work or operations.

Your Work includes:

1. warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of Your Work; and
2. the providing of or failure to provide warning or instructions.

V. Exclusions

This insurance does not apply to:

A. Workers' Compensation, Disability Benefits or Unemployment Compensation Laws

Any obligation of the Insured under any workers compensation law, disability benefits law, unemployment compensation law or any similar law.

B. ERISA or COBRA

Any obligation of the Insured under:

1. the Employees Retirement Income Security Act Of 1974 (ERISA);
2. the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA); or
3. any similar common or statutory law of any jurisdiction;

including any amendments to such laws.

C. Uninsured Motorists, Underinsured Motorists or Automobile No-Fault Laws

Any liability or obligation of the Insured under any automobile:

1. uninsured motorists;
2. underinsured motorists; or
3. no-fault or other first party benefits law.

D. Asbestos

1. Bodily Injury, Property Damage, Personal Injury or Advertising Injury arising out of the actual, alleged or threatened:

- a. absorption, ingestion or inhalation of asbestos in any form by any person; or
- b. existence of asbestos in any form.

2. **Bodily Injury, Property Damage, Personal Injury or Advertising Injury** arising out of the actual, alleged or threatened:
- a. absorption, ingestion or inhalation of any other solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapors, soot, fumes, acids, alkalis, chemicals and **Waste**, in any form by any person; or
 - b. existence of any such other irritant or contaminant in any form;
- and that is part of any **Claim** or **Suit** that also alleges any **Bodily Injury, Property Damage, Personal Injury or Advertising Injury** described in paragraph V.D.1. of this exclusion, above.
3. Any loss, cost or expense arising out of any request, demand, order or statutory or regulatory requirement that any **Insured** or others:
- a. test for, monitor, clean up, remove, contain, treat, detoxify or neutralize asbestos in any form; or
 - b. respond to, or assess, in any way the effects of asbestos in any form.

Because asbestos, and any other such irritants or contaminants, are **Pollutants**, this exclusion applies in addition to any of the following exclusions that apply:

- a. the pollution exclusion in this policy; or
- b. any other pollution-related exclusion made part of this policy.

E. Employment-Related Practices

Bodily Injury or Personal Injury to:

- 1. a person arising out of any:
 - a. refusal to employ that person;
 - b. termination of that person's employment; or
 - c. employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, failure to promote or advance, harassment, humiliation or discrimination applied to or directed at that person; or
- 2. the spouse, child, parent, brother or sister of that person as a consequence of such **Bodily Injury** or **Personal Injury** to that person described in paragraph V.E.1., of this exclusion, above.

This exclusion applies to any obligation to share damages with or repay someone else who must pay damages because of the **Bodily Injury** or **Personal Injury**.

F. Property Damage to Certain Property

Property Damage to:

- 1. property you own, rent or occupy;
- 2. premises you sell, give away or abandon if the **Property Damage** arises out of any part of those premises;
- 3. property loaned to you;
- 4. personal property in the care, custody or control of any **Insured**;

5. that particular part of real property on which you or any contractors or sub-contractors working directly or indirectly on your behalf are performing operations if the **Property Damage** arises out of those operations;
6. that particular part of any property that must be restored, repaired or replaced because **Your Work** was incorrectly performed on it;
7. **Your Product** arising out of **Your Product** or any part of it; or
8. **Your Work** arising out of **Your Work** or any part of it and included in the **Products-Completed Operations Hazard**, unless the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

Paragraph V.F.2, of this exclusion, above, does not apply if the premises are **Your Work** and were never occupied, rented or held for rental by you.

Paragraph V.F.6, of this exclusion, above, does not apply to **Property Damage** included in the **Products-Completed Operations Hazard**.

G. Property Damage to Impaired Property or Property Not Physically Injured

Property Damage to Impaired Property, or property that has not been physically injured, arising out of:

1. a defect, deficiency, inadequacy or dangerous condition in **Your Product** or **Your Work**; or
2. a delay or failure by you, or anyone acting on your behalf, to fulfill the terms of a contract or agreement.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to **Your Product** or **Your Work** after it has been put to its intended use.

H. Product Recall

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

1. **Your Product**;
2. **Your Work**; or
3. **Impaired Property**;

if such product, work or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

I. Expected or Intended Bodily Injury or Property Damage

Bodily Injury or Property Damage expected or intended from the standpoint of the **Insured**.

This exclusion does not apply to **Bodily Injury or Property Damage** resulting from the use of reasonable force to protect persons or property.

J. Known Violation of Rights

Personal Injury or Advertising Injury caused by or committed at the direction of the **Insured**, or by an offense committed at the direction of the **Insured**, with knowledge that the rights of another would be violated and that **Personal Injury or Advertising Injury** would result.

K. Material Published with Knowledge of Falsity

Personal Injury or Advertising Injury arising out of oral, written, or electronic publication of material, if done by or at the direction of the **Insured** with knowledge of its falsity.

L. Material Published Prior to Policy Period

Personal Injury or Advertising Injury arising out of any:

1. oral, written, or electronic publication of material whose first publication;
2. unauthorized use in your **Advertisement** of another's **Advertising Idea** if that unauthorized use first; or
3. infringement in your **Advertisement** of another's copyright, trade dress or **Slogan** if that infringement first;

took place before the beginning of the **Policy Period**.

M. Criminal Acts

Personal Injury or Advertising Injury arising out the willful violation of a penal statute or ordinance committed by, at the direction of, any **Insured**.

N. Advertising, Broadcasting, Publishing, Telecasting, Media and Internet Businesses

Personal Injury or Advertising Injury committed by an **Insured** whose business is:

1. Advertising, broadcasting, publishing or telecasting;
2. Designing or determining content of websites for others; or
3. An Internet search, access, content or service provider.

However, this exclusions does not apply to **Personal Injury** caused by any of the following offenses:

1. false arrest, detention or imprisonment;
2. malicious prosecution;
3. the wrongful eviction from, wrongful entry into or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies committed by or on behalf of its owner, landlord or lessor.

For the purpose of this exclusion, the placing of advertising, borders or frames for an **Insured** or others, or links for or to others, on or in an **Insured's** website is not by itself considered the business of advertising, broadcasting, publishing or telecasting.

O. Breach of Contract

Personal Injury or Advertising Injury arising out of breach of contract, other than misappropriation of **Advertising Ideas** under an implied contract.

P. Quality or Performance of Goods - Failure to Conforms to Statements

Advertising Injury arising out of the failure of goods, products or services to conform with advertised quality or performance.

Q. Wrong Description of Prices

Advertising Injury arising out of the wrong description of the price of goods, products or services.

R. Intellectual Property

Bodily Injury, Property Damage, Personal Injury or Advertising Injury arising out of the actual or alleged infringement or violation of any of the following rights or laws:

1. copyright;
2. patent;
3. trade name;
4. trade secret;
5. trademark; or
6. other intellectual property rights or laws.

This exclusion does not apply to **Bodily Injury or Property Damage** that:

1. results from **Your Products or Your Work**; or
2. is included in the **Products-Completed Operations Hazard**.

This exclusion also does not apply to **Advertising Injury** that results from:

1. the unauthorized use in your **Advertisement** of another's **Advertising Idea**; or
2. infringement in your **Advertisement** of another's copyright, trade dress or trademarked **Slogan**.

S. Pollution

1. **Bodily Injury, Property Damage or Personal Injury or Advertising Injury** arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of **Pollutants** anywhere in the world;
2. Any loss, cost or expense arising out of any request, demand, order or statutory or regulatory requirement that we, the **Insured** or any other person or organization test for, monitor, clean-up, remove, contain, treat, detoxify, respond to, neutralize or assess the effects of **Pollutants**; or
3. Any loss, cost or expense arising out of any **Claim or Suit** by or for any governmental authority or any other person or organization for damages arising out of the testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or responding to or assessing in any way, **Pollutants**.

This exclusion does not apply to **Bodily Injury or Property Damage**:

- a. arising out of heat, smoke or fumes from a **Hostile Fire**;
- b. arising out of the upset, overturn or collision of an **Auto**; or
- c. included in the **Products-Completed Operations Hazard**;

if insurance for such **Bodily Injury or Property Damage** is provided by any **Scheduled Underlying Insurance** or any **Scheduled Retained Limit**. However, the insurance provided by this policy for such **Bodily Injury or Property Damage** will not be broader than the insurance provided by such **Scheduled Underlying Insurance** or **Scheduled Retained Limit**.

T. Nuclear Material

Bodily Injury, Property Damage, Personal Injury or Advertising Injury arising out of:

1. the actual, alleged or threatened exposure of any person or property to; or
2. the **Hazardous Properties** of;

any **Nuclear Material**.

As used in this exclusion:

1. **hazardous properties** includes radioactive, toxic or explosive properties;
2. **nuclear material** means source material, special nuclear material or by-product material;
3. **source material, special nuclear material and by-product material** have the meanings given them in the Atomic Energy Act of 1954 or any law amendatory thereof.

Because **Nuclear Material** is a **Pollutant**, this exclusion applies in addition to any of the following exclusions that apply:

1. the pollution exclusion in this policy; or
2. any other pollution-related exclusion made part of this policy.

VI. Additional Exclusions

This insurance does not apply to the following, unless insurance for such liability is provided by any **Scheduled Underlying Insurance** or any **Scheduled Retained Limit** and then it will be no broader than the insurance provided by such **Scheduled Underlying Insurance** or **Scheduled Retained Limit**:

A. Fellow Employee

Liability of any **Employee** with respect to **Bodily Injury** or **Personal Injury** to:

1. another **Employee** of the same employer; or
2. the spouse or any child, parent, brother or sister of that other **Employee** as a consequence of such **Bodily Injury** or **Personal Injury** to that other **Employee** described in paragraph VI.A.1. of this exclusion.

B. Watercraft

Bodily Injury or **Property Damage** arising out of the ownership, maintenance, use, operation, **Loading** or **Unloading**, or entrustment to others of any watercraft owned, operated or rented by, or loaned to, any **Insured**. This exclusion does not apply to watercraft while ashore on premises owned or rented by any **Insured**.

C. Aircraft

Bodily Injury or **Property Damage** arising out of the ownership, maintenance, use, operation, **Loading** or **Unloading** or entrustment to others of any aircraft owned, rented or chartered by, or loaned to, any **Insured** or on an **Insured's** behalf, with or without crew.

VII. Conditions

A. Appeals

We have the right but not the duty to appeal an award or judgment, including damages covered by this policy, in excess of the applicable **Retained Limit**. If we elect to appeal we will pay, in addition to any applicable limits of insurance of this policy, all costs, interest and expenses incidental to such appeal. However, the result of an appeal will not change the limits of coverage that apply under this policy.

B. Audit

We may audit the Insured's books and records at any time during the term of the Policy Period or within three years after expiration or termination of this policy.

C. Bankruptcy or Insolvency

1. The Insured's bankruptcy, insolvency or inability to pay, or the bankruptcy, insolvency or inability to pay of any issuer of **Scheduled Underlying Insurance** will not relieve us of our obligations under this policy.
2. In the event of any such bankruptcy, insolvency or inability to pay:
 - a. this insurance will neither replace or reduce the insurance provided by **Scheduled Underlying Insurance** nor replace or reduce any **Scheduled Retained Limit**; and
 - b. this insurance will apply only to amounts in excess of the applicable limits of such **Scheduled Underlying Insurance** and **Scheduled Retained Limits**.

D. Cancellation

1. You may cancel this policy. You must mail or deliver to us advance written notice to us stating when the cancellation is to take effect.
2. We may cancel this policy. If we cancel because of non-payment of premium, we must mail or deliver to you not less than 10 days advance written notice stating when the cancellation is to take effect. If we cancel for any other reason, we must mail or deliver to you not less than 60 days advance written notice stating when the cancellation is to take effect. Mailing that notice to you at your mailing address shown in Item 1 of the Declarations shall be sufficient to prove such notice.
3. The Policy Period will end on the day and time stated in the cancellation notice.
4. If we cancel, final premium shall be calculated pro rata based on the time this policy was in force.
5. If you cancel, final premium will be more than pro rata. It will be based on the time this policy was in force and increased by our short rate cancellation table and procedure.
6. Premium adjustment may be made at the time of cancellation or as soon as practicable thereafter, but the cancellation will be effective even if we have not made or offered any premium refund due you. Our check, or our representative's check, mailed or delivered to you at your mailing address shown in Item 1 of the Declarations, shall be sufficient tender of any such refund due you.
7. The first Named Insured in Item 1 of the Declarations shall act on behalf of all other Insureds with respect to the giving or receiving of notice of cancellation and the receipt of any premium refund that may become payable under this policy.

8. Any of these provisions that conflict with a law that controls the cancellation of the insurance in this policy is changed by this statement to comply with that law.

E. Changes

Notice to any agent or knowledge possessed by any agent or any other person will not effect a waiver of, or a change in, any part of this policy. This policy can only be changed by a written endorsement that becomes a part of this policy and that is signed by one of our authorized representatives.

F. Duties in the Event of an Occurrence, Claim or Suit

1. You must see to it that we are notified as soon as practicable of an Occurrence which may result in a Claim or Suit seeking damages covered by this policy. To the extent possible, notice should include:
 - a. how, when and where the Occurrence took place;
 - b. the names and addresses of any injured persons and witnesses; and
 - c. the nature and location of any Bodily Injury, Property Damage, Personal Injury or Advertising Injury arising out of the Occurrence.
2. If a Claim is made or Suit is brought against any Insured that is reasonably likely to involve the coverage provided by this policy, you must notify us in writing as soon as practicable. You and any other involved Insured also must:
 - a. immediately send us copies of any demands, notices, summonses or legal papers received in connection with the Claim or Suit;
 - b. authorize us to obtain necessary records and other information;
 - c. cooperate with us in the investigation, settlement or defense of any Claim or Suit we investigate, settle or defend; and
 - d. assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the Insured because of injury or damage to which this insurance may apply.
3. No Insured will, except at that Insured's own expense, voluntarily make a payment, assume any obligation, make any admission, or incur any expense, other than for first aid for Bodily Injury covered by this policy, without our consent.

G. First Named Insured

The person or organization first named in Item 1 of the Declarations is primarily responsible for the payment of all premiums, the giving and receiving of notice of cancellation and the receiving of any return premiums that become payable under this policy.

H. Inspection

We have the right, but are not obligated, to inspect your premises and operations at any time. Our inspections are not safety inspections. They relate only to the insurability of your premises and operations and the premiums to be charged. We may give your reports on the conditions that we find. We may also recommend changes. However, we will not undertake to perform the duty of any person or organization to provide for the health or safety of your Employees or the public. We do not warrant the health and safety conditions of your premises or operations or represent that your premises or operations comply with any law, regulation, code or standard.

I. Knowledge of Occurrence or Claim

Knowledge of an Occurrence, Claim or Suit by your agent, servant or Employee shall not in itself constitute knowledge by you, unless a Named Insured:

1. shall have received notice of such Occurrence, Claim or Suit from said agent, servant or Employee; or
2. otherwise has knowledge of such Occurrence, Claim or Suit.

J. Legal Action Against Us

No person or organization has a right under this policy to sue us, join us as a party, or otherwise bring us into a Suit seeking damages from, or to determine the liability of, any Insured unless:

1. you have, and any other involved Insured has, complied with all the terms of this policy; and
2. the amount you owe has been determined with our consent or by actual trial and final judgment.

K. Maintenance of Scheduled Underlying Insurance

1. During the Policy Period, you agree:
 - a. to keep Scheduled Underlying Insurance in full force and effect;
 - b. that the terms, including definitions, conditions and exclusions, of Scheduled Underlying Insurance shall not materially change;
 - c. that the total applicable limits of Scheduled Underlying Insurance shall not decrease, except for any reduction or exhaustion of aggregate limits by payment of Claims or Suits for Bodily Injury, Property Damage, Personal Injury or Advertising Injury covered by this policy; and
 - d. that any renewals or replacements of Scheduled Underlying Insurance shall provide equivalent coverage to and afford limits of insurance equal to or greater than the policy being renewed or replaced.
2. If you fail to comply with these requirements, we will be liable only to the same extent that we would have, had you fully complied with these requirements.
3. If you are unable to recover from an issuer of any Scheduled Underlying Insurance because that issuer is unable to pay or you fail to comply with any term or condition of any Scheduled Underlying Insurance, we will only pay those sums covered by this insurance which are in excess of the applicable limit of Scheduled Underlying Insurance shown in the Schedule of Underlying Insurance.

L. Other Insurance

If Other Insurance applies to damages that are also covered by this policy, this policy will apply excess of, and shall not contribute with, that Other Insurance, whether it is primary, excess, contingent or on any other basis. However, this provision will not apply if the Other Insurance is specifically written to be excess of this policy.

M. Premium

The premium for this policy is the amount stated in Item 5 of the Declarations. It is a flat premium unless specified as subject to an audit adjustment.

N. Separation of Insureds

Except with respect to the limits of insurance of this policy and any rights or duties specifically assigned to the first Named Insured designated in Item 1 of the Declarations, this insurance applies:

1. as if each Named Insured were the only Named Insured; and
2. separately to each Insured against whom the Claim is made or the Suit is brought.

O. Titles

The titles of the various sections or paragraphs in this policy and endorsements, if any, attached to this policy are intended solely for convenience or reference and are not to be deemed in any way to affect the provisions to which they relate.

P. Transfer of Rights of Recovery to Us

1. If any Insured has rights to recover from any other person or organization all or part of any payment we have made under this policy, those rights are transferred to us. The Insured must do nothing after loss to impair those rights and must help us enforce them.
2. Any such recovery shall be applied as follows:
 - a. first, any person or organization, including the Insured, that has paid an amount in excess of the applicable limits of insurance of this policy will be reimbursed for the actual excess amount paid under this policy;
 - b. then, we will be reimbursed up to the amount we have paid; and
 - c. last, any Insured or issuer of Scheduled Underlying Insurance is entitled to claim the remainder, up to the amount that Insured or issuer of Scheduled Underlying Insurance has paid.
3. Expenses incurred in the exercise of such rights of recovery shall be apportioned among such persons or organizations, including the Insured, in the same ratio as their respective recoveries are finally shared.

Q. Transfer of Your Rights and Duties

Your rights and duties under this policy may not be transferred without our written consent.

If you die or are legally declared bankrupt, your rights and duties will be transferred to your legal representative, but only while acting within the scope of duties as your legal representative. However, notice of cancellation sent to the first Named Insured designated in Item 1 of the Declarations and mailed to the address shown in this policy will be sufficient notice to effect cancellation of this policy.

R. Unintentional Failure to Disclose Hazards

Your failure to disclose all hazards existing as the inception date of the policy shall not prejudice you with respect to the coverage afforded by this policy, provided that any such failure or omission is not intentional.

S. When Damages Are Payable

We will not make any payment under this policy unless and until the Insured or any other insurer is obligated to pay the Retained Limit.

When the amount of loss has been determined, we will promptly pay on behalf of the Insured the amount of loss covered by this policy.

You shall promptly reimburse us for any amount within the Self-Insured Retention paid by us on behalf of an Insured.

In Witness Whereof we have caused this policy to be executed and attested, but this policy shall not be valid unless countersigned by one of our duly authorized representatives where required by law.

Amendment of Cancellation Notice

Paragraph 2 of Section VII, Conditions, D, Cancellation is replaced by the following:

We may cancel this policy. If we cancel because of non-payment of premium, we must mail or deliver to you not less than 10 days advance written notice stating when the cancellation is to take effect. If we cancel for any other reason, we must mail or deliver to you not less than 90 days advance written notice stating when the cancellation is to take effect. Mailing that notice to you at your mailing address shown in Item 1 of the Declarations shall be sufficient to prove such notice.

All other terms of your policy remain the same.

Claims-Made Coverage And Extended Reporting Period Endorsement

- A. With respect to the coverage provided by this policy that applies in excess of the Scheduled Underlying Insurance listed directly below, which provides coverage on a claims-made basis, this policy also provides coverage on a claims-made basis:

Scheduled Underlying Insurance Description: EMPLOYEE BENEFITS LIABILITY

Scheduled Underlying Insurance Carrier: PER SCHEDULE ON INDIVIDUAL ACCOUNT CERTIFICATE

Scheduled Underlying Insurance Policy #: PER SCHEDULE ON INDIVIDUAL ACCOUNT CERTIFICATE

Scheduled Underlying Insurance Limits: \$1,000,000/\$1,000,000

Scheduled Underlying Insurance Retroactive Date:

Scheduled Underlying Insurance Description:

Scheduled Underlying Insurance Carrier:

Scheduled Underlying Insurance Policy #:

Scheduled Underlying Insurance Limits:

Scheduled Underlying Insurance Retroactive Date:

Scheduled Underlying Insurance Description:

Scheduled Underlying Insurance Carrier:

Scheduled Underlying Insurance Policy #:

Scheduled Underlying Insurance Limits:

Scheduled Underlying Insurance Retroactive Date:

- B. Each of the following applies to such coverage provided by this policy on a claims-made basis:

1. The Bodily Injury or Property Damage must have occurred, the Personal Injury or Advertising Injury must have been caused by an Occurrence committed, or the negligent act, error, or omission must have been committed, on or after the Retroactive Date of this policy;
2. The Bodily Injury or Property Damage must have occurred, the Personal Injury or Advertising Injury must have been caused by an Occurrence committed, or the negligent act, error or omission must have been committed, on or before the earlier of the expiration date shown in Item 2 of the Declarations or the termination date of this policy;
3. The Claim or Suit for any Bodily Injury, Property Damage, Personal Injury, Advertising Injury, or negligent act, error, or omission must have been first made or brought during the Policy Period or within 60 days thereafter, or within any Extended Reporting Period provided under this policy. A Claim or Suit is deemed first made or brought when notice of such Claim or Suit is first received by any Insured or by us, whichever is earlier.
4. No insurance is provided by this policy for any Claim or Suit, or any notification being treated as a Claim or Suit, which is made or brought before the inception date shown in Item 2 of the Declarations and for which any Insured has given notice to any person or organization providing Other Insurance.

- C. The following is added to section VII. Conditions F. Duties in the Event of an Occurrence, Claim or Suit but only with respect to this endorsement:

4. Notice of an Occurrence as described in F.1. above is not notice of a Claim or Suit. However, if:
 - a. we are notified during the Policy Period, as specified above, of an Occurrence; and
 - b. a Claim or Suit is made or brought within 36 months from the date we are notified of that Occurrence;

then this policy will apply as if notice of that Claim or Suit has been made during the Policy Period.

D. The following is added to section VII. Conditions:

Extended Reporting Period

1. If the Insured cancels or does not renew this policy, or if we either cancel or non-renew this policy for any reason other than non-payment of premium, the Insured may elect to purchase the Extended Reporting Period.
2. The Extended Reporting Period will apply only if:
 - a. The Insured requests it in writing within 60 days after the end of the Policy Period;
 - b. The Insured has paid all premiums due for this policy at the time the Insured makes such request; and
 - c. The Insured pays the additional premium for such Extended Reporting Period as charged by us. The additional premium will not exceed 200%.
3. Once the Extended Reporting Period is effective, neither we nor you may cancel the Extended Reporting Period for any reason.
4. Any Claim or Suit first made or brought during the Extended Reporting Period will be deemed to have been made or brought on the last day of the Policy Period. The Extended Reporting Period will not extend the Policy Period or reinstate or increase the Limits of Liability of this policy.
5. Any insurance provided by this policy for Claims or Suits made or brought during the Extended Reporting Period is excess over any Other Insurance providing coverage for such Claims or Suits made or brought after the Extended Reporting Period begins.

E. With respect to this endorsement only, the following are added to section IV. Definitions:

Extended Reporting Period means a period of 5 years or the length of the add'l Extended Reporting Period in your Scheduled Underlying Insurance, whichever is less, starting with the expiration date of this policy, during which Claims or Suits may be first made or brought.

Retroactive Date means . If no retroactive date is shown, then the retroactive date of this policy is the same as the retroactive date shown on the applicable Scheduled Underlying Insurance listed in part A. of this endorsement.

All other terms of your policy remain the same.

Anti-Stacking Endorsement

For the purpose of this endorsement only, the following is added to section **III. Limits of Insurance**:

Regardless of the Limits specified in the Declarations of this policy, if any **Bodily Injury, Property Damage, Personal Injury or Advertising Injury** covered by this policy is also covered by any other Named Insured Certificate issued on the Premier Hotel Insurance Group policy QK06503290 and QK06503289, then the maximum that we will pay for all such **Bodily Injury, Property Damage, Personal Injury or Advertising Injury** will be the highest applicable Each Occurrence Limit under any one of those certificates.

This endorsement does not apply to certificate holders that have no contractual relationship or common ownership between them.

All other terms of your policy remain the same.

Pollution Exclusion Exception For Certain Equipment Including Pollutants From Swimming Pools And Garages

The following is added to the second paragraph of section V, Exclusions S, Pollution 3.

- d. arising out of the discharge, dispersal, seepage, migration, release or escape of pollutants from:
 - 1. chlorine equipment, refrigeration equipment, ventilation equipment, air conditioning equipment; or
 - 2. release of a substance from a swimming pool or a garage.

All other terms of your policy remain the same.

Employee Benefits Liability Endorsement

1. The following is added to section I, Coverage A:

We will also pay on behalf of the Insured all sums in excess of the Retained Limit that the Insured becomes legally obligated to pay as damages by reason of liability imposed by law because of any negligent act, error or omission committed in the Administration of your Employee Benefits Program. However, the insurance provided by this endorsement will not be broader than the insurance provided by the applicable Scheduled Underlying Insurance or the applicable Scheduled Retained Limit for such damages.

2. The following are added to section IV, Definitions:

Administration means any of the following administrative functions:

1. Providing information to Employees, including dependents and beneficiaries, with respect to eligibility for or scope of an Employee Benefit Program;
2. Handling records in connection with an Employee Benefit Program; or
3. Effecting or terminating any Employee's participation in a plan included in the Employee Benefit Program.

Employee Benefit Program means any of the following plans:

1. Group life insurance; group accident or health insurance; dental, vision and hearing plans; and flexible spending accounts; provided that no one other than an Employee may subscribe to such insurance or plans and such plans are generally available to those Employees who satisfy the plan's eligibility requirements;
2. Profit sharing plans, employee savings plans, employee stock ownership plans, pension plans and stock subscription plans, provided that no one other than an Employee may subscribe to such plans and such plans are generally available to all Employees who are eligible under the plan;
3. Unemployment insurance, social security benefits, workers compensation and disability benefits;
4. Vacation plans; or
5. Any other plan designated in the Schedule of Designated Plans below or added by endorsement to this policy.

Schedule of Designated Plans

All other terms of your policy remain the same.

Lead Exclusion

This Insurance does not apply to:

1. **Bodily Injury, Property Damage, Personal Injury or Advertising Injury** arising out of the actual, alleged or threatened:
 - a. absorption, ingestion or inhalation of lead in any form by any person; or
 - b. existence of lead in any form.
2. **Bodily Injury, Property Damage, Personal Injury or Advertising Injury** arising out of the actual, alleged or threatened:
 - a. absorption, ingestion or inhalation of any other solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapors, soot, fumes, acids, alkalis, chemicals and Waste, in any form by any person; or
 - b. existence of any such other irritant or contaminant in any form;and that are part of any Claim or Suit that also alleges any **Bodily Injury, Property Damage, Personal Injury or Advertising Injury** described in paragraph 1. of this exclusion, above.
3. Any loss, cost or expense arising out of any request, demand, order or statutory or regulatory requirement that any Insured or others:
 - a. test for, monitor, clean up, remove, contain, treat, detoxify or neutralize lead in any form;
 - b. respond to, or assess, in any way the effects of lead in any form.

Because lead, and any other such irritant or contaminant, are **Pollutants**, this exclusion applies in addition to any of the following exclusions that apply:

- a. the pollution exclusion in this policy; or
- b. any other pollution-related exclusion made part of this policy.

All other terms of your policy remain the same.

Mold or Other Fungi or Bacteria Exclusion

This insurance does not apply to:

1. Bodily Injury, Property Damage, Personal Injury or Advertising Injury arising out of the actual, alleged or threatened:

- a. absorption, ingestion or inhalation of Mold or other fungi or Bacteria in any form by any person; or
- b. existence of Mold or other fungi or Bacteria in any form;

Paragraph 1 of this exclusion does not apply to:

- a. Bodily Injury or Property Damage arising out of Mold or other fungi or Bacteria which are in, on or part of any good or product that is intended to be consumed as food, beverage or medicine;
- b. Bodily Injury arising out of bacteria which are directly transmitted solely by or from another person to the person sustaining the Bodily Injury, or
- c. Bodily Injury arising out of a bacterial infection which develops in connection with physical harm to the person sustaining the Bodily Injury, if such physical harm is not excluded by this paragraph of this exclusion, or by any other part of this exclusion, and a Claim or Suit is made or brought against the Insured because of such physical harm;

2. Bodily Injury, Property Damage, Personal Injury or Advertising Injury arising out of the actual, alleged or threatened:

1. absorption, ingestion or inhalation of any other solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapors, soot, fumes, acids, alkalis, chemicals and Waste, in any form by any person; or
2. existence of any such other irritant or contaminant in any form;

and that is part of any Claim or Suit that also alleges any Bodily Injury, Property Damage, Personal Injury, or Advertising Injury described in paragraph 1. of this exclusion, above; or

3. Any loss, cost or expense arising out of any request, demand, order or statutory or regulatory requirement that any Insured or others:

- a. test for, monitor, clean up, remove, contain, treat, detoxify or neutralize Mold or other fungi or Bacteria in any form; or
- b. respond to, or assess in any way, the effects of Mold or other fungi or Bacteria in any form.

Because Mold or other fungi or Bacteria can be Pollutants, and such other irritants or contaminants are Pollutants, this exclusion applies in addition to any of the following exclusions that apply:

- a. the pollution exclusion in this policy; or
- b. any other pollution-related exclusion made part of this policy.

For purposes of this endorsement only, the following words or phrases have or include special meaning:

1. Molds or other fungi means:
 - a. any type or form of mold or mildew;
 - b. any other type or form of fungus; or
 - c. any mycotoxin, spore, scent or byproduct that is produced or released by such mold, mildew or other fungus.

2. Bacteria means:

- a. any type or form of bacterium; or
- b. any mycotoxin, spore, scent or byproduct that is produced or released by such bacterium.

All other terms of your policy remain the same.

Pesticide, Herbicide or Fertilizer Applications Endorsement

The following is added to Section V. Exclusions, F. **Property Damage to Certain Property**:

Paragraph V.F.5. of this exclusion, above, does not apply to **Property Damage** to real estate property arising out of **Your Work** in the application of any pesticide, herbicide or fertilizer.

All other terms of your policy remain the same.

Waiver of Rights of Recovery Endorsement

The following is added to section VII. Conditions, P. Transfer of Rights of Recovery to Us:

If, prior to an Occurrence, covered by this policy, you have agreed in a written contract, to waive your rights to recovery of payment for damages for Bodily Injury, Property Damage, Personal Injury or Advertising Injury caused by that Occurrence, then we agree to waive our right of recovery for such payment.

All other terms of your policy remain the same.

SCHEDULED RETAINED LIMITS

Type of Coverage	Limits Of Liability
Certified Acts of Terrorism	\$1,000,000

Name of Insured	Policy Number QK06503290	Effective Date 03/01/11
PREMIER HOTEL INSURANCE GROUP (P2)	Processing Date 05/03/11 13:52	001

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Scheduled Underlying Insurance

Comprehensive General Liability <hr/> Carrier PER SCHEDULE ON INDIVIDUAL ACCOUNT CERT. <hr/> Policy Number PER SCHEDULE ON INDIVIDUAL ACCOUNT CERT. <hr/> Policy Period SEE ACCOUNT CERTIFICATE <hr/> Coverage is: <input type="checkbox"/> claims-made <input checked="" type="checkbox"/> not claims-made	Limits Of Liability <hr/> General Aggregate. \$2,000,000 <hr/> Products/Completed Operations Aggregate. \$1,000,000 <hr/> Personal and Advertising Injury. \$1,000,000 <hr/> Each Occurrence. \$1,000,000
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Automobile Liability <hr/> Carrier PER SCHEDULE ON INDIVIDUAL ACCOUNT CERT. <hr/> Policy Number PER SCHEDULE ON INDIVIDUAL ACCOUNT CERT. <hr/> Policy Period SEE ACCOUNT CERTIFICATE <hr/>	Limits Of Liability <hr/> Bodily Injury And Property Damage Combined. Each Accident \$1,000,000 CSL <hr/> Bodily Injury. Each Person Each Accident \$ \$ <hr/> Property Damage. Each Accident \$
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Employers Liability <hr/> Carrier PER SCHEDULE ON INDIVIDUAL ACCOUNT CERT. <hr/> Policy Number PER SCHEDULE ON INDIVIDUAL ACCOUNT CERT. <hr/> Policy Period SEE ACCOUNT CERTIFICATE <hr/>	Limits Of Liability <hr/> Bodily Injury By Accident Each Accident \$500,000* <hr/> Bodily Injury Disease Policy Limit Each Employee \$500,000* \$500,000*
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*UNLIMITED IN THE STATE OF NEW YORK

ABOVE LIMITS OF LIABILITY ARE MINIMUM LIMITS ONLY. INDIVIDUAL CERTIFICATE MAY REQUIRE HIGHER UNDERLYING LIMITS OR COVERAGE MAY NOT APPLY. (SEE INDIVIDUAL ACCOUNT CERTIFICATE)

Name of Insured	Policy Number QK06503290	Effective Date 03/01/11
PREMIER HOTEL INSURANCE GROUP (P2)		Processing Date 05/03/11 13:52 001

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Scheduled Underlying Insurance

Comprehensive General Liability <hr/> Carrier <hr/> Policy Number <hr/> Policy Period <hr/> Coverage is: <input type="checkbox"/> claims-made <input type="checkbox"/> not claims-made	Limits Of Liability <hr/> General Aggregate. \$ <hr/> Products/Completed Operations Aggregate. \$ <hr/> Personal and Advertising Injury. \$ <hr/> Each Occurrence. \$
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Automobile Liability <hr/> Carrier <hr/> Policy Number <hr/> Policy Period <hr/>	Limits Of Liability <hr/> Bodily Injury And Property Damage Combined, Each Accident \$ <hr/> Bodily Injury. Each Person Each Accident \$ \$ <hr/> Property Damage. Each Accident \$
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Employers Liability <hr/> Carrier <hr/> Policy Number <hr/> Policy Period <hr/>	Limits Of Liability <hr/> Bodily Injury By Accident Each Accident \$ <hr/> Bodily Injury By Disease Policy Limit Each Employee \$ \$
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Scheduled Underlying Insurance - Continued

Type Of Coverage: FOREIGN LIABILITY Carrier PER SCHEDULE ON INDIVIDUAL ACCOUNT CERT. <hr/> Policy Number PER SCHEDULE ON INDIVIDUAL ACCOUNT CERT. <hr/> Policy Period SEE ACCOUNT CERTIFICATE <hr/> Coverage is: <input type="checkbox"/> claims-made <input checked="" type="checkbox"/> not claims-made	Limits Of Liability <hr/> \$1,000,000 EACH OCCURRENCE \$1,000,000 AGGREGATE ABOVE LIMITS OF LIABILITY ARE MINIMUM LIMITS ONLY. INDIVIDUAL CERTIFICATE MAY REQUIRE HIGHER UNDERLYING LIMITS OR COVERAGE MAY NOT APPLY. (SEE INDIVIDUAL ACCOUNT CERTIFICATE)
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Type Of Coverage: LIQUOR LIABILITY Carrier PER SCHEDULE ON INDIVIDUAL ACCOUNT CERT. <hr/> Policy Number PER SCHEDULE ON INDIVIDUAL ACCOUNT CERT. <hr/> Policy Period SEE ACCOUNT CERTIFICATE <hr/> Coverage is: <input type="checkbox"/> claims-made <input checked="" type="checkbox"/> not claims-made	Limits Of Liability <hr/> \$1,000,000 EACH COMMON CAUSE \$1,000,000 AGGREGATE ABOVE LIMITS OF LIABILITY ARE MINIMUM LIMITS ONLY. INDIVIDUAL CERTIFICATE MAY REQUIRE HIGHER UNDERLYING LIMITS OR COVERAGE MAY NOT APPLY. (SEE INDIVIDUAL ACCOUNT CERTIFICATE)
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Type Of Coverage: GARAGEKEEPERS LEGAL LIABILITY Carrier PER SCHEDULE ON INDIVIDUAL ACCOUNT CERT. <hr/> Policy Number PER SCHEDULE ON INDIVIDUAL ACCOUNT CERT. <hr/> Policy Period SEE ACCOUNT CERTIFICATE <hr/> Coverage is: <input type="checkbox"/> claims-made <input checked="" type="checkbox"/> not claims-made	Limits Of Liability <hr/> \$1,000,000 EACH OCCURRENCE ABOVE LIMITS OF LIABILITY ARE MINIMUM LIMITS ONLY. INDIVIDUAL CERTIFICATE MAY REQUIRE HIGHER UNDERLYING LIMITS OR COVERAGE MAY NOT APPLY. (SEE INDIVIDUAL ACCOUNT CERTIFICATE)
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Name of Insured	Policy Number QK06503290	Effective Date 03/01/11
PREMIER HOTEL INSURANCE GROUP (P2)		Processing Date 05/03/11 13:52 001

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Scheduled Underlying Insurance - Continued

Type Of Coverage: MARINE OPERATORS LEGAL LIABILITY Carrier PER SCHEDULE ON INDIVIDUAL ACCOUNT CERT.	Limits Of Liability <hr/> \$5,000,000 OCCURRENCE \$5,000,000 AGGREGATE
Policy Number PER SCHEDULE ON INDIVIDUAL ACCOUNT CERT.	ABOVE LIMITS OF LIABILITY ARE MINIMUM LIMITS ONLY. INDIVIDUAL CERTIFICATE MAY REQUIRE HIGHER UNDERLYING LIMITS OR COVERAGE MAY NOT APPLY. (SEE INDIVIDUAL ACCOUNT CERTIFICATE)
Policy Period SEE ACCOUNT CERTIFICATE	
Coverage is: <input type="checkbox"/> claims-made <input checked="" type="checkbox"/> not claims-made	

Type Of Coverage: PROTECTION & INDEMNITY LIABILITY Carrier PER SCHEDULE ON INDIVIDUAL ACCOUNT CERT.	Limits Of Liability <hr/> \$5,000,000 \$5,000,000
Policy Number PER SCHEDULE ON INDIVIDUAL ACCOUNT CERT.	ABOVE LIMITS OF LIABILITY ARE MINIMUM LIMITS ONLY. INDIVIDUAL CERTIFICATE MAY REQUIRE HIGHER UNDERLYING LIMITS OR COVERAGE MAY NOT APPLY. (SEE INDIVIDUAL ACCOUNT CERTIFICATE)
Policy Period SEE ACCOUNT CERTIFICATE	
Coverage is: <input type="checkbox"/> claims-made <input checked="" type="checkbox"/> not claims-made	

Type Of Coverage: Carrier	Limits Of Liability <hr/>
Policy Number	
Policy Period	
Coverage is: <input type="checkbox"/> claims-made <input type="checkbox"/> not claims-made	

Silica Exclusion

This insurance does not apply to:

1. **Bodily Injury, Property Damage, Personal Injury or Advertising Injury** arising out of any actual, alleged or threatened:
 - a. absorption, ingestion or inhalation of silica in any form by any person; or
 - b. existence of silica in any form.
2. **Bodily Injury, Property Damage, Personal Injury or Advertising Injury** arising out of any actual, alleged or threatened:
 - a. absorption, ingestion, or inhalation of any other solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapors, soot, fumes, acids, alkalis, chemicals and Waste, in any form by any person; or
 - b. existence of any such other irritant or contaminant in any form;and that are part of any **Claim or Suit** that also alleges any **Bodily Injury, Property Damage, Personal Injury or Advertising Injury** described in paragraph 1 of this exclusion above.
3. Any loss, cost or expense arising out of any request, demand, order or statutory or regulatory requirement that any **Insured** or others:
 - a. test for, monitor, clean up, remove, contain, treat, detoxify or neutralize silica in any form; or
 - b. respond to, or assess, in any way the effects of silica in any form.

Because silica, and any other such irritants or contaminants, are **Pollutants**, this exclusion applies in addition to any of the following exclusions that apply:

- a. the pollution exclusion in this policy; or
- b. any other pollution-related exclusion made part of this policy.

All other terms of your policy remain the same.

Washington Amendatory Endorsement

This endorsement changes your policy to comply with, or otherwise respond to, Washington law. Therefore, each change made by this endorsement applies only to the extent:

1. required by Washington statutory or regulatory law; or
2. specifically described in the part of this endorsement which makes that change.

As a result, if the address shown for you in Item 1 of the Declarations of your policy is outside Washington, each change that is made to comply with Washington statutory or regulatory law applies only if, and to the extent:

1. your policy provides coverage for damages that result from your operations in, or which affect, Washington; and
 2. that law applies to that coverage.
1. Section VII, Conditions D, Cancellation 2. is replaced by the following:
 2. We may cancel this policy. If we cancel because of non-payment of premium, we must mail or deliver to you and your agent or broker not less than 10 days advance written notice stating when the cancellation is to take effect. If we cancel for any other reason, we must mail or deliver to you and your agent or broker not less than 60 days advance written notice stating when the cancellation is to take effect. The cancellation notice will state the specific reason for cancellation.
 2. The following condition is added to Section VII, Conditions D, Cancellation:

We may decide not to renew or continue this policy. If so, we will mail or deliver a notice of nonrenewal to you and your agent or broker at least 60 days before policy expiration unless you have obtained replacement insurance or you fail to pay any premium when due after we have offered to renew this policy at least 20 days before the expiration date. The notice will state the reason for cancellation. Mailing that notice to you at your mailing address shown in Item 1 of the Declarations shall be sufficient to prove such notice.

All other terms of your policy remain the same.

Unsolicited Communication Exclusion Endorsement

1. The following is added to section V. Exclusions:

Unsolicited Communication

This insurance does not apply to **Bodily Injury, Property Damage, Personal Injury or Advertising Injury:**

1. arising out of the actual or alleged violation of any law or regulation that restricts or prohibits the transmitting of **Unsolicited Communication**; or
2. alleged in a **Claim or Suit** that also alleges a violation of any law or regulation that restricts or prohibits the transmitting of **Unsolicited Communication**.

2. The following is added to section IV. Definitions:

Unsolicited Communication means any communication, in any form, that:

1. is received by any person or organization; and
2. such person or organization did not ask to receive.

All other terms of your policy remain the same.

Application of Limits of Insurance

1. The following replaces Section III. Limits Of Insurance B. of this policy:
 - B. The General Aggregate Limit, applicable separately to each individual Certificate issued to member of The Premier Hotel Insurance Group , is the most we will pay for all damages covered under Insuring Agreement I. Coverage except for:
 1. damages included in the Products-Completed Operations Hazard, applicable separately for each individual Certificate issued to member of The Premier Hotel Insurance Group ; and
 2. damages that would have been covered under any Automobile Liability type of coverage included in the Scheduled Underlying Insurance or Scheduled Retained Limits to which no aggregate limit applies.

For damages because of Bodily Injury or Property Damage, if any one Scheduled Underlying Insurance or any one Scheduled Retained Limit contains aggregate limits in the same policy that apply separately to each Location or Project, other than an aggregate limit applying to the Products-Completed Operations Hazard, then the General Aggregate Limit stated in the Declarations will apply in the same manner as such aggregate limits of that Scheduled Underlying Insurance or Scheduled Retained Limit.

However, with respect to The Premier Hotel Insurance Group and to each separate Certificate issued to members of The Premier Hotel Insurance Group , we will not pay more than \$100,000,000 for the combined total of all damages covered under Insuring Agreement I. Coverage because of Bodily Injury and Property Damage that arises out of any Location or Project. For the purposes of determining the applicable General Aggregate Limit, each Location or Project that includes premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway, or waterway, or by a right-of-way of a railroad, will be considered a single Location or Project.

2. The following is added to section III. Limits of Insurance:

With respect to each separately numbered Certificate issued to members of The Premier Hotel Insurance Group , endorsed to this policy, and evidenced by monthly bordereaux to us, the General Aggregate Limit will apply jointly to all Named Insureds shown on such Certificate.

3. The following is added to Section IV. Definitions of this policy:

Location means any premises, site or location that you rent or lease from others, or own.

Project means any area away from any premises, site, or location that you rent or lease from others, or own, and at which you are performing operations pursuant to a contract or agreement.

4. The following is added to section IV. Definitions R. Policy Period:

For purposes of the beginning and ending date of coverage under this insurance for each Named Insured, Policy Period shall mean the period of time from the inception date shown on the applicable Certificate to the earlier of the expiration date shown on such Certificate or the termination date of this policy.

All other terms of your policy remain the same.

**Auto Liability Limits of Insurance Endorsement -
Exception for Damages Not Subject to Underlying Aggregate Limit
Applies Only to Auto Liability**

The following replaces the first paragraph of Section **III. Limits Of Insurance B.** of this policy:

- B. The General Aggregate Limit is the most we will pay for all damages covered under Insuring Agreement I. Coverage except for:
1. damages included in the Products-Completed Operations Hazard; and
 2. damages that would have been covered under any Automobile Liability type of coverage included in the Scheduled Underlying Insurance or Scheduled Retained Limits to which no aggregate limit applies.

All other terms of your policy remain the same.

Auto Liability Limitation

The following is added to section V, Exclusions:

Auto

This insurance does not apply to Bodily Injury, Property Damage, Personal Injury or Advertising Injury arising out of the ownership, maintenance, operation, use, Loading or Unloading or entrustment to others of any Auto.

However, if insurance for such Bodily Injury, Property Damage, Personal Injury or Advertising Injury is provided by any Scheduled Underlying Insurance or any Scheduled Retained Limit, then:

1. this exclusion shall not apply; and
2. the insurance provided by this policy will not be broader than the insurance provided by that Scheduled Underlying Insurance or that Scheduled Retained Limit.

All other terms of your policy remain the same.

Garagekeepers Legal Liability

This insurance does not apply to Bodily Injury, Property Damage, Personal Injury or Advertising Injury arising out of:

Garagekeepers Legal Liability.

However, if insurance for such Bodily Injury, Property Damage, Personal Injury or Advertising Injury is provided by any Scheduled Underlying Insurance or any Scheduled Retained Limit, then:

1. this exclusion does not apply;
2. section V, F. Property Damage To Certain Property does not apply; and
3. the insurance provided by this policy will not provide broader coverage than the insurance provided by that Scheduled Underlying Insurance or that Scheduled Retained Limit.

All other terms of your policy remain the same.

Pollution Exclusion Except Building Heating Or Air Conditioning Equipment Or Water Heating Equipment

1. The following is added to Section V, Exclusions S. Pollution of this policy:

This exclusion also does not apply to Bodily Injury arising out of Building Heating or Air Conditioning Equipment or Water Heating Equipment Fumes, Smoke, Soot, or Vapors if insurance for such Bodily Injury is provided by any Scheduled Underlying Insurance or any Scheduled Retained Limit. However, the insurance provided by this policy for such Bodily Injury will not be broader than the insurance provided by such Scheduled Underlying Insurance or Scheduled Retained Limit.

2. The following is added to Section IV, Definitions of this policy:

Building Heating or Air Conditioning Equipment or Water Heating Equipment Fumes, Smoke, Soot, or Vapors means only the fumes, smoke, soot, or vapors that:

1. result from equipment used to:
 - a. heat, cool or dehumidify, a building; or
 - b. heat water for personal use by persons within a building;
- at or on any premises owned, rented, or occupied by or loaned to, any Insured; and
2. are within that building.

All other terms of your policy remain the same.

Knowledge Of Occurrence Or Claim

1. The following replaces section VII. Conditions I. Knowledge of Occurrence or Claim

Knowledge of Occurrence or Claim

Knowledge of an Occurrence, Claim or Suit by your agent, servant or Employee shall not in itself constitute knowledge by you, unless an Executive Officer or anyone working in the capacity as Partner

1. shall have received notice of such Occurrence, Claim or Suit from said agent, servant or Employee; or
2. otherwise has knowledge of such Occurrence, Claim or Suit.

All other terms of your policy remain the same.

Crisis Management Service Expenses Endorsement

1. The following is added to section I. Coverage:

Crisis Management Service Expenses

We will reimburse you, or pay on your behalf, **Crisis Management Service Expenses** arising out of a **Crisis Management Event** that first commences during the **Policy Period**. The most we will pay for all **Crisis Management Service Expenses** for all **Crisis Management Events** that first commence during the **Policy Period** is the **Crisis Management Service Expenses Limit**. The **Crisis Management Service Expenses Limit** is 1% of the General aggregate limit stated in Item 3.B. of the Declarations. A **Crisis Management Event** will be deemed to first commence at the time when any **Executive Officer** first becomes aware of an **Occurrence** that leads to a **Crisis Management Event** and will end when we determine that the crisis no longer exists, or when the **Crisis Management Service Expenses Limit** has been exhausted, whichever occurs first.

A **Retained Limit** does not apply to **Crisis Management Service Expenses**.

Any payment of **Crisis Management Service Expenses** that we make under this endorsement shall not be determinative of our obligations under this policy with respect to, nor create any duty to defend against or indemnify any **Insured** for, any **Claim** or **Suit**.

2. The following is added to section III. Limits of Insurance:

The most we will pay for **Crisis Management Service Expenses** arising out of all **Crisis Management Events** is the **Crisis Management Service Expenses limit** as stated in paragraph 1. above. Payment of any such **Crisis Management Service Expenses** is in addition to, and shall not reduce, any aggregate limits under this policy.

3. The following is added to section IV. Definitions:

Crisis Management Event means an **Occurrence** that an **Executive Officer** of the **Named Insured** reasonably determines has resulted, or may result, in:

1. damages covered by this policy that are in excess of the total applicable limits of the **Scheduled Underlying Insurance** or **Scheduled Retained Limit**; and
2. significant adverse regional or national media coverage.

Crisis Management Service Expenses means the reasonable and necessary expenses you incur in:

1. retaining a public relations consultant or firm, or a crisis management consultant or firm; or
 2. planning or executing your public relations campaign;
- to mitigate the negative publicity generated from a **Crisis Management Event**.

Executive Officer means the:

1. Chief Executive Officer;
 2. Chief Operating Officer;
 3. Chief Financial Officer;
 4. President;
 5. General Counsel;
 6. general partner (if the **Named Insured** is a partnership); or
 7. sole proprietor (if the **Named Insured** is a sole proprietorship);
- of the **Named Insured**, or any person acting in the same capacity as any individual listed above.

4. The following is added to section V. Exclusions:

Newly Acquired, Controlled or Formed Entities

Crisis Management Service Expenses arising out of a **Crisis Management Event** that occurred prior to the date you acquired, controlled or formed any other entity, even though an **Executive Officer** only first becomes aware of an **Occurrence** that leads to such **Crisis Management Event** after such date.

5. The following is added to section VII. Conditions F. Duties in the Event of an Occurrence, Claim or Suit:

You must also see to it that we are notified by telephone within 24 hours of a **Crisis Management Event** that may result in **Crisis Management Service Expenses**.

You must also provide written notice as soon as practicable. To the extent possible, notice should include:

- a. how, when and where the **Crisis Management Event** took place;
- b. the names and addresses of any injured persons and witnesses;
- c. the nature and location of any **Bodily Injury, Property Damage, Personal Injury or Advertising Injury** arising out of the **Crisis Management Event**; and
- d. the reason it is likely to involve damages covered by this policy in excess of the **Retained Limit** and involve regional or national media coverage.

You must submit all incurred expenses within 180 days after we have notified you of our determination that the **Crisis Management Event** no longer exists. Expenses submitted after 180 days of such notice are not reimbursable.

All other terms of your policy remain the same.

Failure To Notify Insurer Of Occurrence

The following is added to section VII, Conditions F, 2:

Your failure to notify us of an Occurrence that may result in a Claim or Suit seeking damages covered by this Policy because you inadvertently notified another insurer of such Occurrence will not invalidate this Policy, but only if you notify us immediately after you become aware of such inadvertent error.

All other terms of your policy remain the same.

POLICY CHANGE ENDORSEMENT

This endorsement summarizes the changes to your policy. All other terms of your policy not affected by these changes remain the same.

How Your Policy Is Changed

EFFECTIVE 11/01/2011 THE FOLLOWING FORMS ARE ADDED TO YOUR POLICY BUT ONLY WITH RESPECT TO THE NAMED INSURED AND CERTIFICATE LISTED:

SUP001 DESIGNATED PREMISES LIMITATION AS RESPECTS:
NEVADA PROPERTY 1 LLC DBA THE COSMOPOLITAN OF LAS VEGAS
CERTIFICATE #2149-A

SUP009 DESIGNATED OPERATIONS EXCLUSION AS RESPECTS:
NEVADA PROPERTY 1 LLC DBA THE COSMOPOLITAN OF LAS VEGAS
CERTIFICATE #2149-B

SUP007 PROFESSIONAL SERVICES EXCLUSION AS RESPECTS:
NEVADA PROPERTY 1 LLC DBA THE COSMOPOLITAN OF LAS VEGAS
CERTIFICATE #2149-C

SU301 LIMITED ABUSE OR MOLESTATION COVERAGE ENDORSEMENT AS RESPECTS:
NEVADA PROPERTY 1 LLC DBA THE COSMOPOLITAN OF LAS VEGAS
CERTIFICATE #2149-D

Premium Change Which Is Due Now

Additional premium N/A

Returned premium N/A

If issued after the date your policy begins, these spaces must be completed and our representative must sign below.

Policy issued to:
PREMIER HOTEL INSURANCE GROUP (P2)

Authorized Representative

Endorsement takes effect: 11/01/11
Policy number: QK06503290
Processing date: 11/22/11 14:10 090

40704 Ed. 5-84

Endorsement

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AA01147

Designated Premises Limitation

This endorsement changes your Specialty Commercial Umbrella Liability Policy, but only as respects to:

Nevada Property I LLC dba The Cosmopolitan of Las Vegas

Certificate #2149-A

Effective Date of Cert Holder 11/01/2011

Effective Date of Endorsement 11/01/2011

Pol #QK06503290

This insurance only applies to Bodily Injury, Property Damage, Personal Injury or Advertising Liability arising out of:

1. the ownership, maintenance, occupancy or use of the premises designated in the Schedule of Covered Premises, below, including any property located on such premises; or
2. any goods or products manufactured, distributed or serviced at or from such premises.

Schedule of Covered Premises

Description and Location of Premises:

	Added	Deleted
Cosmopolitan Hotel 3708 Las Vegas Blvd, Las Vegas NV 89109	11/01/2011	
Leased Office Space 4285 Polaris Ave, Las Vegas NV 89103	11/01/2011	
Leased Space - Recruitment Center 7180 Pollack Drive, Suites 100 and 140, Las Vegas NV 89119	11/01/2011	
Leased Office Space 3485 West Harmon Blvd, Las Vegas NV 89103	11/01/2011	
Leased Office - Training Space 650 White Drive, Suite 280, Las Vegas NV 89103	11/01/2011	
Leased Office Space - Corporate Office 5170 Badura Avenue, Las Vegas NV 89118	11/01/2011	
Leased Warehouse Space Units 100,110,120,130 6025 Procyon Street, Las Vegas NV 89118	11/01/2011	
Parking Lot - Used for Employee Parking 3200 West Tomkins Avenue, Las Vegas NV 89103	11/01/2011	

SUP001 Ed. 1-06

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AA01148

Description and Location of Premises (continued):

All other terms of your policy remain the same.

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AA01149

Designated Operations Exclusion

This endorsement changes your Specialty Commercial Umbrella Liability Policy, but only as respects to:

Nevada Property I LLC dba The Cosmopolitan of Las Vegas

Certificate #2149-B

Effective Date of Cert Holder 11/01/2011

Effective Date of Endorsement 11/01/2011

Pol #QK06503290

The following is added to section V. Exclusions:

Described Operations

This insurance does not apply to Bodily Injury, Property Damage, Personal Injury or Advertising Injury arising out of the operations designated in the Schedule of Designated Operations below.

Schedule of Designated Operations

All Operations covered under OCIP/Wrap Up for the construction of the Cosmopolitan Hotel of Las Vegas and all property damage to "your work" arising out of it or any part of it including the Products/Completed Operations Hazard related to the original construction.

Professional Services Exclusion

This endorsement changes your Specialty Commercial Umbrella Liability Policy, but only as respects to:

Nevada Property I LLC dba The Cosmopolitan of Las Vegas

Certificate #2149-C

Effective Date of Cert Holder 11/01/2011

Effective Date of Endorsement 11/01/2011

Pol #QK06503290 with respect to Emergency Medical Technicians (EMT's)

This insurance does not apply to Bodily Injury, Property Damage, Personal Injury or Advertising Injury arising out of the rendering of, or failure to render, any professional service by or on behalf of the Insured.

All other terms of your policy remain the same.

Limited Abuse Or Molestation Coverage Endorsement

Nevada Property I LLC dba The Cosmopolitan of Las Vegas
Certificate #2149-D
Effective Date of Cert Holder 11/01/2011, Effective Date of Endorsement 11/01/2011
Pol #QK06503290

1. The following is added to section V. Exclusions:

This insurance does not apply to Bodily Injury, Property Damage, Personal Injury, or Advertising Injury arising out of any Abuse or Molestation.

However if insurance for such Bodily Injury or Personal Injury is provided by any Scheduled Underlying Insurance or any Scheduled Retained Limit, then:

1. this exclusion does not apply; and
2. the insurance provided by this policy will not provide broader coverage than the insurance provided by that Scheduled Underlying Insurance or that Scheduled Retained Limit.

2. The following is added to section IV. Definitions J. Insured:

However, none of the following is an Insured under paragraph IV. J. for Bodily Injury or Personal Injury arising out of any Abuse or Molestation:

1. any Perpetrator;
2. any person or organization that has been added to your policy as an additional insured, or any employee, leased worker, agent, representative or volunteer worker of such person or organization; or
3. any of your independent contractors, or any employee, leased worker, agent, representative or volunteer worker of such independent contractor.

Subject to section II. Defense of this agreement, paragraph 2.1 above does not apply to any Perpetrator once a final, non-appealable adjudication in the Suit establishes that such Perpetrator did not commit the Abuse or Molestation.

Also, paragraph 2.2. above does not apply to any person or organization:

1. to whom you have agreed in a written contract requiring insurance to include such person or organization as an additional insured; or
2. that has been added to your policy as an additional insured because such person or organization owns property that you manage, but only to the extent such Abuse or Molestation is committed on such property.

Such person or organization is an Insured, but only to the extent that the Bodily Injury or Personal Injury is caused by Abuse or Molestation arising out of your business. The person or organization does not qualify as an additional insured with respect to the independent acts or omissions of such person or organization. The insurance provided to such additional insureds shall be limited to the limits of liability required by that written contract requiring insurance. This endorsement shall not increase the limits of insurance described in section III. Limits of Insurance.

3. The following is added to section IV. Definitions O. Occurrence:

As respects Bodily Injury or Personal Injury arising out of any Abuse or Molestation, all single, multiple, continuous, sporadic or related acts of Abuse or Molestation, committed by one Perpetrator or two or more Perpetrators acting together, will be deemed to be one Occurrence, regardless of the number of:

1. Insureds;
2. Claims made or Suits brought; or

3. persons or organizations making Claims or bringing Suits.

Such Occurrence will be deemed to have been committed on the date the first such Abuse or Molestation is committed, regardless of when such acts or contacts are actually committed.

4. The following are added to section IV. Definitions:

Abuse or Molestation means any illegal or offensive physical act or contact committed by any Perpetrator against any person who is:

1. under 18 years of age;
2. legally incompetent; or
3. in the care, custody or control of any Insured and is physically or mentally incapable of consenting to such physical act or contact.

Perpetrator means any of the following persons who actually or allegedly commit any illegal or offensive physical act or contact:

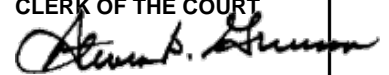
1. you or your spouse, if you are an individual;
2. your partners or members, or their spouses, if you are a partnership or joint venture;
3. your managers or members, if you are a limited liability company;
4. your executive officers or directors, if you are an organization other than a partnership, joint venture or limited liability company;
5. your Employees or volunteer workers; or
6. any other person acting together with any of the persons described in paragraphs 1. through 5. above.

5. The following is added to section II. Defense A.:

We have no duty to defend, investigate or settle any Claim or Suit on behalf of any Perpetrator. However, we will reimburse you or such Perpetrator for the amount of such person's reasonable and necessary defense costs:

1. once a final, non-appealable adjudication in the Suit establishes that such Perpetrator did not commit the Abuse or Molestation;
2. when the Retained Limit has been exhausted by payment of judgment or settlements that would be covered by this policy; and
3. only to the extent that such defense costs are also covered by the applicable Scheduled Underlying Insurance or Scheduled Retained Limit.

All other terms of your policy remain the same.



1 OPPC
2 Ramiro Morales [Bar No.: 007101]
3 William C. Reeves [Bar No.: 008235]
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8 Telephone: 702/699-7822
9 Facsimile: 702/699-9455

10 Attorneys for Plaintiff
11 St. Paul Fire & Marine Ins. Co.

12 DISTRICT COURT

13 CLARK COUNTY, NEVADA

14 ST. PAUL FIRE & MARINE INS. CO.,)	Case No.: A758902
)	Dept. No.: XXVI
15 Plaintiff,)	
)	
16 v.)	
)	
17 ASPEN SPECIALTY INS. CO., et al.,)	
)	
18 Defendants.)	
)	

19
20 OPPOSITION TO MOTION FOR SUMMARY JUDGMENT FILED BY MARQUEE
21 AND COUNTERMOTION RE: DUTY TO INDEMNIFY

22 Additional Documents: Consolidated Appendix (A-V);
23 Declaration of William Reeves, Response to Facts

24 Date: October 15, 2019
25 Time: 9:30 a.m.

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1 TO THE COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 Plaintiff St. Paul Fire & Marine Ins. Co. ("St. Paul") hereby both opposes the Motion for
3 Summary Judgment filed by Roof Deck Entertainment, LLC dba Marquee ("Marquee") and moves
4 for Partial Summary Judgment regarding Marquee's obligation to indemnify St. Paul for sums it
5 incurred and paid on behalf of Nevada Property 1 LLC dba Cosmo Hotel ("Cosmo") to satisfy the
6 adverse judgment entered against it.

7 As discussed herein, Marquee's motion constitutes an improper attempt to seek
8 reconsideration of two prior rulings previously made by this Court rejecting the identical arguments
9 now made for a third time in its motion. As previously addressed, it is undisputed that Cosmo is not
10 a party to the Nightclub Management Agreement ("Management Agreement"). Given this, Cosmo's
11 claims at issue in this case are neither curtailed nor limited by the provisions of the Management
12 Agreement that Marquee relies upon in its motion such that Marquee's arguments fail.

13 Meanwhile, St. Paul's countermotion presents a purely legal issue given that it is undisputed
14 that Cosmo's liability in the underlying matter was derivative of Marquee's active negligence in
15 solely and exclusively operating and managing the subject nightclub. Given that all facts regarding
16 the respective roles of both Cosmo and Marquee are undisputed, it is appropriate and warranted for
17 this Court to adjudicate the purely legal issue of whether St. Paul, as subrogee of all rights of
18 Cosmo, is entitled to be indemnified by Marquee for the sums St. Paul paid to satisfy the judgment
19 entered against Cosmo via settlement.

20 Accordingly, for the reasons set forth herein, it is respectfully submitted that Marquee's
21 motion be denied and that St. Paul's counter-motion be granted.¹

22 Overview

23 This matter arises from an underlying bodily injury claim involving a guest at the

24 _____
25 ¹ A separate issue has arisen regarding the purported timeliness of this brief. In connection with efforts to explore a
26 briefing schedule, Marquee simultaneously agreed to an extended schedule while opining that this Opposition is
27 untimely as it should have been filed ten (10) calendared days after the motion was filed. Appendix, Ex. V. Per the
28 controlling Local Rules that remain posted on this Court's website, however, parties are afforded ten (10) court days
(not calendared days) to file Oppositions such that Marquee's position fails. See Declaration of William Reeves.
Regardless, by agreeing to a briefing schedule in response to an inquiry made within one week of the filing of its
motion, Marquee is estopped from now claiming this brief is untimely, especially given the lack of any conceivable
prejudice.

1 Marquee Nightclub in which the guest obtained a \$150,000,000+ judgment against Marquee and
2 Cosmo that was subsequently resolved via settlement. It is undisputed that the judgment arose from
3 the conduct of Marquee as it solely and exclusively operated the nightclub pursuant to the terms of
4 the Management Agreement that it had entered into with Nevada Restaurant Venture I, LLC
5 ("Master Tenant"), a separate legal entity from Cosmo. Of significance, Cosmo is not a party to the
6 Management Agreement as the agreement is between Marquee and the Master Tenant only, and not
7 Cosmo.²

8 In an effort to avoid bearing the exposure for its own conduct for which Cosmo was held
9 vicariously liable, Marquee again intentionally conflates Cosmo and the Master Tenant in an effort
10 to argue that Cosmo's claims are barred pursuant to various provisions of the Management
11 Agreement. Marquee's efforts to mislead this Court regarding the parties to the Management
12 Agreement are undertaken for a patent and obvious reason - Marquee is solely exclusively liable
13 and responsible for the judgment entered in the underlying matter as it solely and exclusively
14 operated and managed the nightclub.

15 Given that Cosmo was not a party to the Management Agreement, Cosmo's claims against
16 Marquee are not barred or impacted by any terms or conditions of the Management Agreement
17 since it is not bound by it (except as to limited provisions not relevant to this suit. Given this, St.
18 Paul's subrogation claims (in which it stands in the shoes of Cosmo) are viable and, as discussed
19 herein, meritorious.³

20 St. Paul's claims against Marquee are based on the fact while Marquee actively managed and
21 operated the nightclub, Cosmo did not, such that Cosmo's exposure was limited to vicarious
22 liability. As Cosmo had no active role as to any aspect of the nightclub's operation such that its
23 exposure was based on vicarious, derivative liability for the acts or omissions of Marquee, Cosmo is
24 entitled to reimbursement from Marquee. See *Rodriguez v. Primadonna Co., LLC*, 125 Nev. 578

25
26 ² Master Tenant was not named as a Defendant in the underlying suit. Meanwhile Cosmo is a limited signatory to only
certain provisions of the Management Agreement, none of which are relevant to this matter.

27 ³ Unlike in the motion AIG filed, Marquee does not argue that Nevada does not recognize the concept of subrogation.
28 While AIG's position on this issue is misplaced, it has not been raised by Marquee, and is therefore not an issue in
dispute in connection with its motion,

(2009); *The Doctors Co. v. Vincent*, 120 Nev. 644 (2004). As St. Paul indemnified Cosmo, St. Paul, by standing in the shoes of its insured, is entitled to recover directly from Marquee. See *Arguello v. Sunset Station, Inc.*, 127 Nev. 365 (2011), explaining that subrogation permits for an insurer that has paid a loss under an insurance policy to pursue all the rights and remedies belonging to the insured with respect to any loss covered by the policy.

Background Facts

Per above, this matter arises from an underlying suit in which a guest contends he was injured at the Marquee Nightclub. See Appendix, Ex. B. Operation of the Marquee Nightclub is governed by the Management Agreement. Appendix, Ex. A. Per the Agreement:

- Marquee is defined as the "Operator"
- Master Tenant is defined as "Owner"
- Cosmo is defined as the "Property Owner"

Appendix, Ex. A, pp 2, 15-17.

The Management Agreement expressly provides that it is entered by and between Marquee (Operator) and the Master Tenant (Owner). Appendix, Ex. A, p 2. Cosmo, while a beneficiary of certain terms of the Management Agreement, is not a party to the agreement. Appendix, Ex. A, p 2.⁴

Per the Management Agreement, Marquee developed, operated and managed the Marquee Nightclub. Ex. A, p 24. Consistent with the terms and provisions of the Management Agreement, a Marquee representative at trial testified as follows:

Q. Who controls the day-to-day operations at the Marquee?

A. Roof Deck Entertainment, LLC.

Q. Who exercises actual control over hiring, training, and supervising the employees, including the security staff?

A. Roof Deck Entertainment, LLC.

⁴ Per the Management Agreement, Cosmo is the owner of the real property that houses the Marquee Nightclub. As Cosmo leased the space to Master Tenant, the latter had legal possession of the Marquee Nightclub such that per the terms of the Management Agreement, Master Tenant (and not Cosmo) retained Marquee to operate the nightclub.

Ex Q, 134:22-135:3.

In April 2014, David Moradi commenced a suit against Marquee and Cosmo (but not the Master Tenant). Appendix, Ex. B. Per the Complaint, Mr. Moradi alleged that he was assaulted by security personnel while a guest at the Marquee Nightclub. Appendix, Ex. B ¶¶ 9-18. By virtue of this assault, Moradi sought monetary damages, including loss of income. Appendix, Ex. B

Defendant Aspen Specialty Ins. Co. ("Aspen"), an insurer for both Marquee and Cosmo, appointed the same defense counsel to defend both Marquee and Cosmo. Appendix, Ex. C; see also Appendix, Ex. D. After conducting a preliminary investigation, but before appearing in the case, defense counsel sent Aspen a detailed report dated September 18, 2014 in which he advised that "Plaintiff has already stated he sustained \$15-\$20 million of losses from his hedge fund as a result of this incident. Appendix, Ex. C, p 6.

Defense counsel proceeded to file an Answer on behalf of both Marquee and Cosmo. Appendix, Ex. D. By jointly representing both parties, no cross or counter claims were pursued between the parties. *Id.* By doing so, the relative fault of Marquee and Cosmo was never raised, pled or adjudicated.

On December 10, 2015, Moradi made a settlement demand of \$1,500,000. Appendix, Ex. G. At that time, defense counsel had advised both Aspen and Defendant National Union Fire Ins. Co. of Pittsburgh, PA ("AIG") in multiple reports that Moradi was making a loss of income claim of \$300,000,000. Appendix, Ex E, p 4; Ex F. Despite being aware of these claims, Aspen and AIG declined to accept the demand or even engage in settlement discussions. Appendix, Ex H.

In advance of trial, the parties filed various motions to address what exposure, if any, Cosmo faced. Appendix, Exs. N, O, P. In joint filings made on behalf of Marquee and Cosmo, Marquee conceded that Cosmo had no express or implied authority to control the Marquee Nightclub such that Moradi was not a business invitee of the Cosmo. Appendix, Ex. P, 5:20-6:4 Given this, Marquee conceded that Cosmo was "at most an alleged passive tortfeasor" with no active role in any aspect of the operations of the Marquee Nightclub. Appendix, Ex. O, 4:27-5:3; see also Ex N, 4:26-5:1. Trial testimony from the Marquee representative was in accord that Marquee alone (and not Cosmo) operated and managed the Marquee Nightclub. Appendix, Ex. O, 3:15-24.

1 Despite this lack of control or management, the Trial Court held that Cosmo was legally
2 vicariously liable for the conduct of Marquee by virtue of a finding of non-delegable duty. Marquee
3 Appendix, Ex. 3, 14:13-16:25. In light of this ruling, Cosmo was held to be jointly liable for the
4 conduct of Marquee notwithstanding the fact that Cosmo had no active role in managing or
5 operating the venue.

6 Trial commenced in March 2017 against both Marquee and Cosmo, the latter on the basis of
7 vicarious liability only. As both Cosmo and Marquee were represented by the same attorney, no
8 crossclaims were asserted between the parties. The jury returned a verdict in April 2017 in excess
9 of \$150,000,000 jointly against Marquee and Cosmo. Appendix, Ex. R.

10 Given that Marquee and Cosmo were jointly represented with no cross or counter claims
11 pled between them, the verdict form did not seek to allocate fault between the parties. *Id.* Given
12 this, no findings were made in the underlying proceeding regarding the allocation of fault between
13 Marquee and Cosmo. *Id.*

14 St. Paul, who issued an excess insurance policy to Cosmo, indemnified Cosmo for the
15 judgment via a settlement.⁵ Marquee Appendix, Ex 2. St. Paul then commenced the instant action
16 in which it seeks recovery from Marquee for the sums paid on behalf of Cosmo.

17 Procedural History

18 This matter was commenced in July 2017. The instant motion is the third motion Marquee
19 has filed as Marquee previously filed two essentially identical motions before it filed an Answer.
20 Both prior motions were denied. See, e.g., Appendix, Ex. S.

21 Undeterred, Marquee has filed the same motion, now labeled as a Motion for Summary
22 Judgment. Per the motion, Marquee again attempts to conflate Cosmo with the Master Tenant,
23 despite the fact that only the latter is a party to the Management Agreement.

24 In previously denying Marquee's motion, this Court noted the following:

25 Mr. Salerno: . . . When they say they're not a party to the contract and
26 then they say they signed it, I think that's somewhat tongue-in-cheek.
27 At page 89 of the Nightclub Management Agreement, they are the
project owner. The project owner is defined throughout this

28 ⁵ Zurich, who is not a party to this litigation, issued a primary policy to Cosmo.

1 agreement, and so are their insurance requirements and the
2 relationship to those, as I went through.

3 THE COURT: But there's -- project owner, I appreciate, and it's
4 defined all the way through. But they didn't agree to the whole
5 contract. They only agreed to put -- acknowledged and agreed to be
6 bound, solely with respect to the provisions of blah, blah, blah.

7 Appendix, Ex. T, 24:6-15.

8 As the rationale for denying the earlier motions equally applies to Marquee's third bite at the
9 proverbial apple, it is properly denied.

10 Meanwhile, in addressing the merits of St. Paul's claims against Marquee, this Court made
11 the following observation:

12 Ultimately, it's a purely legal issue. There is nothing to be done. I
13 mean, the Court either says, you've got a claim under express
14 indemnity because you're bound by this contract, or
15 you're not bound by this contract. You're not a party. You didn't sign
16 it, saying you would be bound by those provisions.

17 Appendix, Ex. T, 27:3-7.

18 Given that St. Paul's claims against Marquee present a legal issue based on undisputed facts,
19 this Court may properly adjudicate the merits of St. Paul's countermotion.

20 Discussion

21 A. Cosmo Is Not A Party To The Management Agreement.

22 As before, Marquee's motion is largely premised on the contention that Cosmo is a party to
23 the Management Agreement (and therefore bound by it) such that St. Paul's subrogation claims are
24 barred by virtue of provisions contained in the agreement regarding the scope of express indemnity
25 and when subrogation rights are waived. As before, Marquee's argument is misplaced.

26 The Management Agreement identifies the following parties:

- 27 • Marquee is defined as the "Operator"
- 28 • Master Tenant is defined as "Owner"
- Cosmo is defined as the "Property Owner"

Appendix, Ex. A, pp 2, 15-17.

As reflected in the agreement itself:

- Cosmo is the Owner/Landlord

- Master Tenant is the Master Tenant
- Marquee is the Operator/Manager of the nightclub.

Meanwhile, the Management Agreement expressly provides as follows:

THIS NIGHTCLUB MANAGEMENT AGREEMENT is made and entered into effective as of the 21st day of April, 2010, between Nevada Restaurant Venture 1 LLC, a Delaware limited liability company ("Owner"), and Roof Deck Entertainment LLC, a Delaware limited liability company ("Operator").

...

D. Operator, through its principals and employees, is experienced in the management and operation of nightclubs, bars, lounges, pool deck areas, cabanas, and associated facilities and operations and desires to manage and operate the Nightclub Venues on the terms and conditions hereinafter set forth.

E. Owner desires to retain Operator to manage and operate the Nightclub Venues on behalf of Owner on terms and conditions hereinafter set forth

Appendix, Ex. A, p. 2.

Of significance, the provisions quoted above omit any mention of Cosmo/Property Owner as a party to the agreement. That omission was intentional and by design.

Recognizing that Cosmo is not a party to the Management Agreement, Marquee argues that Cosmo is nonetheless bound by the agreement by virtue of the provisions of an unexecuted lease agreement that was contemplated between Cosmo and the Master Tenant. In so doing, Marquee offers no case law or facts to support how a party that is intentionally omitted as a signatory to an agreement (Cosmo) can nonetheless be bound by provisions that the non-signatory intentionally and deliberately never agreed to. It cannot.

It is fundamental contract law that for a contract to bind a party, that party must agree to it. See generally, *May v. Anderson*, 121 Nev. 668, 672, 119 P.3d 1254, 1257 (2005) ("Basic contract principles require, for an enforceable contract, an offer and acceptance, meeting of the minds, and consideration."). Given this, a waiver of subrogation only applies to a party who agreed to it and not to others. 73 Am. Jur. 2d Subrogation § 73 ("Such [subrogation] waivers only apply to parties who had agreed to such a waiver, and a waiver of subrogation clause cannot be enforced beyond the scope of the specific context in which it appears."); see, e.g., *Willis Realty Assocs. v. Cimino Const.*

Co., 623 A.2d 1287, 1289 (Me. 1993); *Gulf Ins. Co. v. Quality Bldg. Contractor, Inc.*, 58 A.D.3d 595, 597, 871 N.Y.S.2d 366, 368 (2009); *St. Paul Fire & Marine Ins. Co. v. FD Sprinkler Inc.*, 76 A.D.3d 931, 932, 908 N.Y.S.2d 637, 639 (2010) ("The subcontractors, who are neither signatories nor parties to the main contract between the owner and the general contractor, cannot avail themselves of the waiver-of-subrogation clause contained therein."); *Fortin v. Nebel Heating Corp.*, 12 Mass. App. Ct. 1006, 1007, 429 N.E.2d 363, 364 (1981) (waiver of subrogation in contract between owner and general contractor did not extend to subcontractor who was not a party to that agreement).

Here, Cosmo expressly did not agree to be bound by the purported waiver of subrogation provision. The signature line where Cosmo executed the Management Agreement specifically states as follows:

Acknowledged and agreed to be bound solely with respect to the provisions of Sections 3.3, 3.4, 3.5.3, 3.8, 4.1, 4.6, 6.1, 8.6, 8.8.1, 9.10, 10.2, 13.2, 14.1.7, 14.1.8, 14.2.3, 15.2, 35, 39.1 and 39.2

Appendix, Ex. A, p 89.

As the waiver of subrogation provision (which appears in section 12.2.6 of the Management Agreement) is not one of the sections Cosmo agreed to be bound by, it has no bearing on St. Paul's claims. Appendix, Ex A, p 63

Meanwhile, the indemnity provision included in Section 13.1 of the Management Agreement expressly provides that it applies to "the negligence or misconduct of Operator . . . not otherwise covered by the insurance required to be maintained hereunder." Appendix, Ex A, p 63. Per the Management Agreement, Cosmo was not required to maintain any insurance. Given this, the limitation in the indemnity provision itself does not apply to St. Paul and the policy it issued.

The draft lease agreement does not alter this analysis. To the extent that Cosmo agreed to procure coverage for Master Tenant, Cosmo's agreement to do so has no bearing on this suit since Master Tenant was not a party to the underlying lawsuit such that the sums at issue do not pertain to it. Meanwhile, per the Management Agreement entered into between Marquee and Master Tenant, no obligation existed for Cosmo to procure insurance coverage for itself. Given this, to the extent that Cosmo agreed procure coverage for the Master Tenant and elected to insure itself, its decision

1 to do so has no bearing on the merits of St. Paul's rights to subrogation

2 B. No Waiver Exists Given The Jury's Finding That Marquee's Conduct Was Intentional.

3 Exculpatory contractual clauses, such as “waiver of subrogation” provisions, which
4 exonerate a person for willful, wanton, reckless or intentional misconduct are contrary to public
5 policy and unenforceable. *Rhino Fund, LLP v. Hutchins*, 215 P.3d 1186, 1193 (Colo. App. 2008),
6 as modified on denial of reh'g (Dec. 24, 2008) (exculpatory provision which sought to waive
7 liability for intentional misconduct unenforceable) (citing *Wright v. Sony Pictures Entm't, Inc.*, 394
8 F.Supp.2d 27, 33 (D.D.C.2005) (waivers do not exempt a party that recklessly or intentionally
9 causes harm); see also *Airfreight Express Ltd. v. Evergreen Air Ctr., Inc.*, 215 Ariz. 103, 158 P.3d
10 232, 240 (App.2007) (concluding a party may contract to limit liability for nonperformance of
11 promises, but not where the party acts fraudulently or in bad faith); *Finch v. Southside Lincoln–*
12 *Mercury, Inc.*, 274 Wis.2d 719, 685 N.W.2d 154, 160, 163–64 (App.2004) (exculpatory clauses in
13 lease agreements were unenforceable based on public policy, where the alleged harm is caused
14 intentionally or recklessly); *Fremont Homes, Inc. v. Elmer*, 974 P.2d 952, 956–57 (Wyo.1999)
15 (limitation of remedies provision could not exempt party from liability for intentional torts).

16 In this case, Marquee was held liable for assault and battery. Appendix, Ex. R. Given this,
17 any damages arising from or relating to these claims cannot be the subject of a waiver of
18 subrogation provision.⁶

19 Marquee’s assertion of this provision is particularly egregious because Marquee accepted
20 Cosmo’s tender of defense and indemnity, recognizing that it was responsible for the Moradi claim.
21 Marquee defended Cosmo in the Moradi action through its insurers, which provided joint counsel
22 for Marquee and Cosmo. Appendix, Exs. C, D. The appointment of joint counsel prejudiced
23 Cosmo’s interests in the litigation as, among other things, it insulated Marquee from any assessment
24 of Marquee’s liability vis-à-vis Cosmo.

25 When Marquee accepted Cosmo’s tender of defense and indemnity, and appointed joint
26 counsel to defend Marquee and Cosmo under a unified defense, Marquee effectively bought the

27 _____
28 ⁶ The Verdict Form does not allocate damages to any specific count or legal theory. At a minimum, therefore, questions of fact exist as to which damages were awarded via these counts.

claim. To find otherwise would allow an indemnitor (Marquee) to accept a tender, defend, manipulate the proceedings to the detriment of the indemnitee (Cosmo), and then when the indemnitee gets hit with an astronomical judgment, deny the very indemnity obligation that allowed it to manipulate the defense to its advantage. The fundamental unfairness of such gamesmanship is patent, and alone compels the conclusion that Marquee waived any “waiver of subrogation” provision when it accepted Cosmo’s tender. Accordingly, Marquee is precluded and barred from relying on a waiver of subrogation provision to shield it from its own gross misconduct.

C. Neither NRS 17.255 nor NRS 17.265 Precludes St. Paul from Asserting A Statutory Subrogation Claim for Contribution Under NRS 17.225.

Marquee argues that St. Paul’s statutory contribution claim fails as a matter of law because (1) Cosmo intentionally contributed to Mr. Moradi’s injuries; and (2) Cosmo's sole recourse against Marquee is pursuant to the terms of the Management Agreement so as to preclude a right to contribution under the Uniform Contribution Act. While St. Paul agrees with Marquee that Cosmo has a right to indemnity from Marquee via the Management Agreement to which St. Paul is subrogated, the agreement is not the exclusive manner of recovery given that Cosmo is not bound by it. Meanwhile, the contention that Cosmo was held to be liable for intentional conduct is unfounded and belied by the evidence before this Court. Given this, Marquee’s attack is baseless, misstating both the underlying facts and Nevada law on statutory contribution.

First, Mr. Moradi’s injuries and damages were caused solely by Marquee’s actions and unreasonable conduct and not by any affirmative acts or unreasonable conduct on the part of Cosmo. Per the Court, Cosmo was held merely vicariously liable for Marquee’s actions and Mr. Moradi’s resulting damages. Marquee Appendix 3, 14:13-16:25. Contrary to Marquee’s assertions, the Special Verdict does not find Cosmo intentionally caused or contributed to Mr. Moradi’s injuries as it includes no allocations. See Appendix, Ex. R.

Regardless, the verdict was never reduced to a judgment because the parties ultimately settled the Moradi action. In so doing, all parties (Moradi, Marquee, Cosmo) expressly agreed that the parties are compromising disputed claims, that defendants Marquee and Cosmo admitted no fault, and that no part of the settlement was for punitive damages. See *Terrell v. Cent. Washington*

1 *Asphalt, Inc.*, 2016 WL 8738266 (D. Nev. 2016) (where complaint alleges both negligent and
2 intentional claims, settlement whereby defendants do not admit liability, and which expressly states
3 no payment for punitive damages, is insufficient to support finding that defendants intentionally
4 caused or contributed to the injury such as to preclude contribution claim under NRS 17.255).

5 As Marquee is well aware, having been a party to the Moradi action, Cosmo's liability was
6 hotly contested by both Cosmo and Marquee, with both defendants arguing to the Moradi court, on
7 multiple motions, that Cosmo had no liability for the acts of Marquee and its employees. If the
8 parties had not come to a settlement, Cosmo would have necessarily appealed any judgment entered
9 against it as Cosmo continues to assert a position of no-liability. As such, St. Paul contributed to
10 the settlement on behalf of Cosmo to resolve the potentially covered claims against Cosmo. Joint
11 tortfeasors are entitled to seek contribution on claims of negligence. *Hanson v. Johnson*, 2011 WL
12 3847203 (D. Nev. 2011) (defendants jointly and severally liable for negligence claim entitled to
13 seek contribution under NRS 17.255).

14 Second, Marquee fundamentally misapplies NRS Section 17.265, which operates only to
15 preclude an indemnitor bound by the terms of a written contract it agreed to from attempting to end-
16 run its indemnity obligation by seeking contribution from the very party it agreed to indemnify. It
17 does not, as Marquee contends, preclude a party that is a third party beneficiary under an express
18 indemnity agreement from seeking, in the alternative, equitable contribution. Given this, to the
19 extent that recovery via the express indemnity claim is unavailable, Cosmo is entitled to
20 contribution via statute.

21 In this case, St. Paul has asserted claims based both in express indemnity and statute. These
22 claims are not mutually exclusive.

23 The express indemnity claim is based on the fact that Cosmo is an intended third party
24 beneficiary of the provision itself. Given this, Cosmo has the right to enforce the indemnity
25 provision. *Morelli v. Morelli*, 102 Nev. 326 (1986) (recognizing that a nonparty to a contract has
26 standing to enforce the contract only when the nonparty is an intended third-party beneficiary); see
27 also *De Los Reyes v. Bank of America, N.A.*, 2016 WL 8735707 (D. Nev. 2016) (ruling that an
28 intended third party beneficiary has standing to enforce a contract provision).

As addressed herein, Cosmo is not a party to the Management Agreement. Given this, Cosmo's rights are not limited to those set forth in the Management Agreement. Given this, St. Paul is entitled to pursue in the alternative a claim for contribution against Marquee for the amount of St. Paul's settlement payment that exceed Cosmo's fair share. *Van Cleave v. Gamboni Const. Co.*, 101 Nev. 524 (1985) (holding NRS 17.265 "merely provides that no contribution exists where indemnity exists.")

Contrary to Marquee's assertions, Section 17.265 does not preclude St. Paul's claim for contribution. Instead, Section 17.265 merely provides that where St. Paul succeeds on its indemnity claim, it is precluded from also seeking contribution "[w]here one tort-feasor is entitled to indemnity from another, the right of the indemnity obligee is for indemnity and not contribution." This of course makes sense because otherwise St Paul could obtain an impermissible excess recovery.

Section 17.265 goes on to say, in a clause later added by the legislature for clarification, that one who owes indemnity may not pay its indemnity obligation and then turn around and sue the very party it paid to indemnify for contribution in connection with the amounts it was required to pay that party in indemnity ("indemnity obligor is not entitled to contribution from the obligee for any portion of his or her indemnity obligation.") In other words, if St. Paul succeeds on its express indemnity claim and Marquee is ordered to pay St. Paul, as Cosmo's subrogee, the amount of St. Paul's settlement contribution, Marquee may not then pursue Cosmo/St. Paul for contribution on the amount of the settlement payment indemnified by Marquee. Obviously, the legislature added this last clause to preclude parties from improperly using the Uniform Contribution Act as a loophole to ameliorate their indemnity obligations. See *Id.* at 528.

D. Marquee Owes A Duty To Indemnify St. Paul.

The express indemnity provision in the Management Agreement provides as follows:

Operator shall indemnify, hold harmless and defend Owner and its respective parents, subsidiaries and Affiliates and all of each of their respective officers, directors, shareholders, employees, agents, members, managers, representatives, successors and assigns ("Owner Indemnitees") from and against any and all Losses to the extent incurred as a result of (i) the breach or default by Operator of any term or condition of this Agreement, or (ii) the negligence or willful

misconduct of Operator or any of its owners, principals, officers, directors, agents, employees, Staff, members, or managers ("Operator Representatives") and not otherwise covered by the insurance required to be maintained hereunder.

Appendix, Ex A, p. 64.

Meanwhile, NRS 12.225 provides as follows:

1. [W]here two or more persons become jointly or severally liable in tort for the same injury to person or property or for the same wrongful death, there is a right of contribution among them even though judgment has not been recovered against all or any of them.

2. The right of contribution exists only in favor of a tortfeasor who has paid more than his or her equitable share of the common liability, and the tortfeasor's total recovery is limited to the amount paid by the tortfeasor in excess of his or her equitable share. No tortfeasor is compelled to make contribution beyond his or her own equitable share of the entire liability.

Contribution is a creature of statute. *Doctors Co. v. Vincent*, 120 Nev. 644, (2004). Under the statute, the remedy of contribution allows one tortfeasor to extinguish joint liabilities through payment to the injured party, and then seek partial reimbursement from a joint tortfeasor for sums paid in excess of the settling or discharging tortfeasor's equitable share of the common liability.

In this case, it is undisputed that Marquee acted both with negligence and willful misconduct. Appendix V. It is likewise undisputed that per Marquee, Cosmo was "at most an alleged passive tortfeasor" with no active role in any aspect of the operations of the Marquee Nightclub. Appendix, Ex N, 4:26-5:1; Ex. O, 3:15-24, 4:27-5:3; Ex. P, 5:20-6:4.⁷

Despite this lack of control or management, the Trial Court held that Cosmo was legally vicariously liable for the conduct of Marquee by virtue of a finding of non-delegable duty, and therefore jointly liable. Marquee Appendix 3, 14:13-16:25. In light of this ruling, Cosmo's liability was based on ruling that it was a joint tortfeasor by virtue of vicarious liability and nothing more.

Based on these facts, Cosmo is entitled to indemnity either per the Management Agreement and/or per statute.

⁷ While Marquee suggests that Cosmo may have been held liable for its own intentional conduct, the fact that it played no active role in the operation and/or management of the nightclub coupled with the concession that Cosmo's sole exposure was based on derivative, vicarious liability undermines this position. Of significance, as the Verdict Form does not provide otherwise, Marquee's musings on this issue have no factual basis.

1 Under the Management Agreement, Cosmo is entitled to indemnity given that it faced
2 liability arising from Marquee's negligence and willful misconduct. As the Management Agreement
3 did not obligate Cosmo to procure its own insurance, the carve out in the express indemnity for
4 damages "not otherwise covered by the insurance required to be maintained hereunder" has no
5 bearing on St. Paul's claims and is irrelevant.

6 Alternatively, based on these same circumstances, Cosmo is entitled to indemnity per
7 statute. See *Hunt/PENTA v. Aon Risk Services South, Inc.*, 2018 WL 8786380 (D. Nev. 2018),
8 explaining that a right to contribution exists where two or more persons become jointly or severally
9 liable in tort for the same injury to a person even though judgment has not been recovered against
10 all or any of them. As Cosmo is not a party to the Management Agreement, it did not agree to limit
11 its recovery to the terms and provisions of the Management Agreement. Given this, St. Paul's
12 claims are meritorious.

13 By virtue of the undisputed facts, it is respectfully submitted that St. Paul is entitled to
14 indemnity from Marquee. Accordingly, St. Paul requests that an order issue holding that Marquee
15 is obligated to indemnify St. Paul for the sums it paid to resolve the suit.

16 E. This Brief Is Timely Filed.

17 Per this Court's website, the Local Rules provide that the deadline to file and serve
18 Oppositions and Counter-Motions is ten (10) court days from the date the Motion was filed. Absent
19 from the Local Rules available via the Court's website is any change or modification to this
20 deadline. This brief is being filed in conformance with these rules. Declaration of William Reeves.

21 In connection with efforts to explore a briefing schedule first raised with counsel Marquee
22 one week after it filed its motion, Marquee simultaneously agreed to an extended briefing schedule
23 while opining that the Opposition is untimely. Appendix, Ex. V. The latter position is based on an
24 apparent March 2019 Administrative Order that seeks to modify these rules in light of changes to
25 the NRCF (which does not address motion deadlines).

26 Based on the view that the Administrative Order has the effect of accelerating the deadline
27 to oppose motions to ten (10) calendar days (not Court or business days), Marquee apparently
28 intends to argue that this brief is untimely. Appendix, Ex. V. In so doing, Marquee must concede

1 that an extension was requested on Calendar Day 7 and that it held on responding to this inquiry
2 until Calendar Day 11 so as to take the position that this brief is untimely. Appendix, Ex. V.

3 In this case, the Local Rules that remain on the Court's website expressly provide that the
4 deadline to file an Opposition is ten (10) court days. Notwithstanding the apparent Administrative
5 Order, these rules remain in force and effect, and are therefore binding. Declaration of William
6 Reeves.

7 Regardless, the law abhors a forfeiture. *Matter of W.N. Connell and Marjorie T. Connell*
8 *Living Trust, dated May 18, 1972*, __ Nev. __, 426 P.3d 599 (2018). In this case, by agreeing to a
9 briefing schedule in response to an inquiry made within one week of the filing of its motion,
10 Marquee is estopped from claiming this brief is untimely, especially given the lack of any
11 conceivable prejudice by the filing of this brief. Appendix, Ex. V

12 To the extent this Court believes otherwise, request is made that it convene an evidentiary
13 hearing to address the circumstances giving rise to the filing of this brief and the exchange between
14 counsel.

15 Conclusion

16 Based on the foregoing, it is respectfully submitted that Marquee's motion be denied and that
17 St. Paul's counter-motion be granted.

18 Dated: September 27, 2019

MORALES FIERRO & REEVES

19
20
21 By: /s/ William C. Reeves
22 Ramiro Morales
23 William C. Reeves
24 Marc J. Derewetzky
25 MORALES FIERRO & REEVES
26 600 S. Tonopah Drive, Suite 300
27 Las Vegas, NV 89106
28 Attorneys for Plaintiff

1 PROOF OF SERVICE

2 I, William Reeves, declare that:

3 I am over the age of eighteen years and not a party to the within cause.

4 On the date specified below, I served the following document:

5 OPPOSITION TO MOTION FOR SUMMARY JUDGMENT FILED BY MARQUEE
6 AND COUNTERMOTION RE: DUTY TO INDEMNIFY

7 CONSOLIDATED APPENDIX OF EXHIBITS (A-V)

8 DECLARATION OF WILLIAM REEVES

9 RESPONSE TO STATEMENT OF FACTS OFFERED BY MARQUEE

10 Service was effectuated in the following manner:

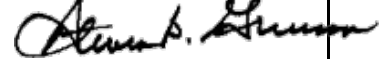
11 _____ BY FACSIMILE:

12 XXXX BY ODYSSEY (Notice Only): I caused such document(s) to be electronically served
13 through Odyssey for the above-entitled case to the parties listed on the Service List maintained on
14 the Odyssey website for this case on the date specified below.

15 I declare under penalty of perjury that the foregoing is true and correct.

16 Dated: September 27, 2019

17 
18 William Reeves



DECL
Ramiro Morales [Bar No.: 007101]
William C. Reeves [Bar No.: 008235]
Marc J. Derewetzky [Bar No.: 006619]
MORALES FIERRO & REEVES
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St. Paul Fire & Marine Ins. Co.

DISTRICT COURT

CLARK COUNTY, NEVADA

ST. PAUL FIRE & MARINE INS. CO.,)	Case No.: A758902
)	Dept. No.: XXVI
Plaintiff,)	
)	DECLARATION OF WILLIAM REEVES
v.)	IN SUPPORT OF PLAINTIFF'S
)	OPPOSITION TO MARQUEE'S MOTION
ASPEN SPECIALTY INS. CO., et al.,)	FOR SUMMARY JUDGMENT
)	
Defendants.)	DATE: October 15, 2019
)	TIME: 9:30 a.m.

I, William Reeves, declare as follows:

1. I am an attorney with Morales Fierro & Reeves, counsel for Plaintiff St. Paul Fire & Marine Ins. Co. ("St. Paul") in this matter.

2. Included in the Consolidated Appendix of Exhibits filed herewith are true and correct copies of the following documents:

Exhibit A	Excerpts of Nightclub Management Agreement
Exhibit B	Complaint filed in the underlying case
Exhibit C	September 18, 2014 Letter
Exhibit D	Answer filed in the underlying case
Exhibit E	November 13, 2015 Defense Report
Exhibit F	December 7, 2015 Email
Exhibit G	December 10, 2015 Offer
Exhibit H	December 18, 2015 Letter

1 Exhibit I November 2, 2016 Letter
2 Exhibit J February 13, 2017 Notice
3 Exhibit K March 9, 2017 Letter
4 Exhibit L March 21, 2017 Letter
5 Exhibit M March 21, 2017 Letter
6 Exhibit N Trial Brief Re: Liability filed March 15, 2017
7 Exhibit O Reply Brief filed March 23, 2017
8 Exhibit P Opposition Brief filed April 12, 2017
9 Exhibit Q Excerpts of Trial Proceedings
10 Exhibit R Verdict Form filed April 26, 2017
11 Exhibit S Motion To Dismiss filed June 25, 2018
12 Exhibit T Excerpts of October 30, 2018 Hearing
13 Exhibit U Order Re: Defendants' Motion to Dismiss
14 Exhibit V Correspondence Between Counsel

15 3. Copies of all documents were either produced in this case or filed with this Court.
16 As to the latter documents, request is made that this Court take judicial notice of them.

17 4. An issue has arisen regarding the purported timeliness of this brief. In connection
18 with efforts to explore a briefing schedule, counsel for Marquee simultaneously agreed to an
19 extended schedule while opining that this Opposition is untimely as it should have been filed ten
20 (10) calendar days after the motion was filed. I disagree with this position as the Local Rules that
21 remain posted on this Court's website expressly provide that parties are afforded ten (10) court days
22 (not calendar days) to file Oppositions.

23 5. Counsel for Marquee provided me with a copy of an apparent March 2019
24 Administrative Order that seeks to modify these rules in light of changes to the NRCP. I am
25 unfamiliar with the Order as I have never previously received a copy. More importantly, the Order
26 is belied by the Local Rules posted on this Court's website as no mention is made of any changes to
27 the deadlines for motions.

28 6. I attempted to meet and confer with counsel for Marquee regarding this issue. In so

1 doing, I pointed out that the inquiry as to a brief scheduled was made on calendar Day 7 and that
2 counsel failed to respond to the inquiry until calendar Day 11. As set forth in the correspondence
3 (Appendix, Ex. V), concerns exist regarding whether the timeline was strategic and contemplated.

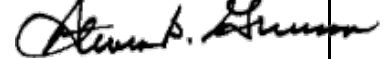
4 7. Regardless, by agreeing to a briefing schedule in response to an inquiry made within
5 one week of the filing of its motion, it is respectfully submitted that Marquee is estopped from now
6 claiming this brief is untimely, especially given the lack of any conceivable prejudice. If this Court
7 believes otherwise, request is made that it convene an evidentiary hearing to address the
8 circumstances surrounding the filing of this brief.

9 I declare that the foregoing is true and correct based on my own personal knowledge and
10 under penalty of perjury. Executed in Concord, California on the date specified below.

11 Dated: September 27, 2019

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14 William C. Reeves
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RSPN
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DISTRICT COURT

CLARK COUNTY, NEVADA

ST. PAUL FIRE & MARINE INS. CO.,)	Case No.: A758902
)	Dept. No.: XXVI
Plaintiff,)	
)	RESPONSE TO STATEMENT OF FACTS
v.)	OFFERED BY MARQUEE IN SUPPORT
)	OF ITS MOTION FOR SUMMARY
ASPEN SPECIALTY INS. CO., et al.,)	JUDGMENT
)	
Defendants.)	DATE: October 15, 2019
)	TIME: 9:30 a.m.

TO THE COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

Plaintiff St. Paul Fire & Marine Ins. Co. responds to Roof Deck Entertainment, LLC dba
Marquee Nightclub's Statement of Undisputed Facts as follows:

Responses

Fact No. 1: This action arises out of an underlying bodily injury action captioned *David
Moradi v. Nevada Property 1, LLC dba The Cosmopolitan, et al.*, District Court Clark County,
Nevada, Case No. A-14-698824-C ("Underlying Action"). [FAC¶6].

Response: Agreed.

Fact No. 2: In the Underlying Action, David Moradi ("Moradi") alleged that, on or about
April 8, 2012, he went to the Marquee Nightclub located within The Cosmopolitan Hotel and
Casino to socialize with friends, when he was attacked by Marquee employees resulting in personal
injuries. [FAC ¶¶ 6-7].

Response: Agreed.

1 Fact No. 3: Moradi filed his complaint in the Underlying Action against Nevada Property 1,
2 LLC d/b/a The Cosmopolitan of Las Vegas ("Cosmopolitan") and Roof Deck Entertainment, LLC
3 d/b/a Marquee Nightclub ("Marquee") on April 4, 2014, asserting causes of action for Assault and
4 Battery, Negligence, Intentional Infliction of Emotional Distress, and False Imprisonment. [FAC ¶¶
5 8-10, Exhibit A].

6 Response: Agreed. Note that Nevada Restaurant Venture I, LLC ("Master Tenant"), was not
7 named as a Defendant in the suit.

8 Fact No. 4: Moradi alleged that, as a result of his injuries, he suffered past and future lost
9 wages/income and sought general damages, special damages and punitive damages. [FAC ¶9,
10 Exhibit A].

11 Response: Agreed.

12 Fact No. 5: During the course of the Underlying Action, Moradi asserted that Cosmopolitan,
13 as the owner of The Cosmopolitan Hotel and Casino (where the Marquee Nightclub was located),
14 faced exposure for breaching its non-delegable duty to keep patrons safe, including Moradi. [FAC
15 ¶13].

16 Response: Irrelevant. In Pretrial motions, Marquee conceded that Cosmo had no express or
17 implied authority to control the Marquee Nightclub such that Moradi was not a business invitee of
18 the Cosmo. Appendix, Ex. P, 5:20-6:4 Given this, Marquee conceded that Cosmo was "at most an
19 alleged passive tortfeasor" with no active role in any aspect of the operations of the Marquee
20 Nightclub. Appendix, Ex. O, 4:27-5:3; see also Ex N, 4:26-5:1. Trial testimony from the Marquee
21 representative was in accord that Marquee alone (and not Cosmo) operated and managed the
22 Marquee Nightclub. Appendix, Ex. Q, 134:22-135:3; Ex. O, 3:15-24. Despite this lack of control
23 or management, the Trial Court held that Cosmo was legally vicariously liable for the conduct of
24 Marquee by virtue of a finding of non-delegable duty. Marquee Appendix, Ex. 3, 14:13-16:25.
25 Cosmo's exposure, therefore, was limited to being held vicariously liable for the conduct of
26 Marquee.

27 Fact No. 6: The Court in the Underlying Action held as a matter of law that Cosmopolitan,
28 as owner of the property, "had a nondelegable duty and can be vicariously held responsible for the

1 conduct of the Marquee security officers ... " and that Marquee and Cosmopolitan could be held
2 jointly and severally liable. [RJN, Ex. 3].

3 Response: To be clear, the Trial Court held that Cosmo was legally vicariously liable for the
4 conduct of Marquee by virtue of a finding of non-delegable duty. Marquee Appendix, Ex. 3, 14:13-
5 16:25.

6 Fact No. 7: The Underlying Action went to trial and, on April 28, 2017, the jury returned a
7 verdict in Moradi's favor and awarded compensatory damages in the amount of \$160,500,000.
8 [FAC ¶60, Ex. C].

9 Response: Agreed.

10 Fact No. 8: After the verdict and during the punitive damages phase of the trial in the
11 Underlying Action, Moradi made a global settlement demand to Marquee and Cosmopolitan. [FAC
12 ¶66].

13 Response: Agreed.

14 Fact No. 9: National Union, St. Paul and the other insurers accepted Moradi's settlement
15 demand and resolved the Underlying Action, the specific contributions of which are confidential.
16 [FAC ¶67-70].

17 Response: Undisputed that the case settled.

18 Fact No. 10: The April 21, 2010 NMA was entered into between Marquee and NRV1 with
19 regard to the Marquee Nightclub located within The Cosmopolitan Hotel & Casino. [FAC ¶10;
20 Bonbrest Decl., Ex. 1].

21 Response: The Management Agreement was entered into between by and between Marquee
22 (Operator) and the Master Tenant (Owner). Appendix, Ex. A, p 2. Cosmo, while a beneficiary of
23 certain terms of the Management Agreement, is not a party to the agreement. Appendix, Ex. A, p 2.

24 Fact No. 11: Cosmopolitan leased the premises to its related entity, NRV1. [FAC ¶10].

25 Response: Agreed that Cosmo leased the premises to the Master Tenant. Cosmo, however,
26 is not a party the Management Agreement. Appendix, Ex. A, p 2.

27 Fact No. 12: Cosmopolitan is identified as the Project Owner in the Recitals section of the
28 NMA. [Bonbrest Decl., Ex. 1, at T000064].

1 Response: Per the Agreement:

- 2 • Marquee is defined as the "Operator"
- 3 • Master Tenant is defined as "Owner"
- 4 • Cosmo is defined as the "Property Owner"

5 Appendix, Ex. A, pp 2, 15-17.

6 Fact No. 13: Cosmopolitan is a signatory to the NMA both on behalf of itself and NRV1, for
7 which it is the Managing Member. [Bonbrest Decl., Ex. 1, at T000152].

8 Response: Irrelevant as Cosmo/Property Owner is an entity that is separate and distinct from
9 Master Tenant/Owner.

10 Fact No. 14: Cosmopolitan and NRV1 are related entities. [FAC ¶10]

11 Response: Irrelevant as Cosmo/Property Owner is an entity that is separate and distinct from
12 Master Tenant/Owner.

13 Fact No. 15: Cosmopolitan and Marquee are separate and unrelated entities. [FAC ¶¶4, 10].

14 Response: Agreed.

15 Fact No. 16: Cosmopolitan is the Project Owner of the hotel casino and resort premises,
16 including the Marquee Nightclub venue. [Bonbrest Decl., Ex. 1, at T000064].

17 Response: Disputed. Cosmo is the owner of the premises. Master Tenant is the tenant in
18 possession of the premises. Marquee is the operator of the nightclub that operates out of the
19 premises.

20 Fact No. 17: NRV1 entered into the NMA in which Marquee agreed to manage and operate
21 the Marquee nightclub in the Cosmopolitan hotel. [Bonbrest Decl., Ex. 1, at T000064; T000087 –
22 T000095].

23 Response: Agreed that Marquee entered into a contract with the Master Tenant whereby
24 Marquee agreed to solely and exclusively operate and manage the nightclub. Cosmo is not a party
25 to the agreement. Appendix, Ex. A, p 2. and had no active role in the operation and/or management
26 of the nightclub. Appendix, Ex N, 4:26-5:1; Ex. O, 3:15-24, 4:27-5:3; Ex. P, 5:20-6:4; Ex Q,
27 134:22-135:3.

28 Fact No. 18: The NMA provides:

1. Definitions

...

"Losses" shall mean any and all liabilities, obligations losses damages, penalties, claims actions suits, costs, expenses and disbursements of a Person not reimbursed by insurance, including, without limitation, all reasonable attorneys' fees and all other reasonable professional or consultants' expenses incurred in investigating, preparing for serving as a witness in, or defending against any action or proceeding whether actually commenced or threatened.

[Bonbrest Decl., Ex. 1, at T000072].

Response: Irrelevant as Cosmo is not a party to the Management Agreement.

Fact No. 19: The NMA provides:

12. Insurance

12.1 [NRV1's] Insurance. During the Term of this Agreement, [NRV1] shall provide and maintain the following insurance coverage, at its sole cost and expense ... :

...

12.1.2 Commercial general liability insurance, including contractual liability and liability for bodily injury or property damage with a combined single limit of not less than Two Million Dollars (\$2,000,000) for each occurrence, and at least Four Million Dollars (\$4,000,000) in the aggregate, including excess coverage; and

12.1.3 Any coverage required under the terms of the Lease to the extent such coverage is not the responsibility of [Marquee] to provide pursuant to Section 12.2 below.

12.2 [Marquee's] Insurance.

12.2.1 During the Term of this Agreement, [Marquee] shall provide and maintain the following insurance coverage (the "[Marquee] Policies") the cost of which shall be an Operating Expense:

12.2.1.1 Commercial general liability insurance (occurrence form) , including broad form contractual liability coverage, with minimum coverages as follows: general aggregate - \$4,000,000; products-completed operations aggregate - \$4,000,000 personal and advertising injury - \$5,000,000; liquor liability - \$1,000,000 with \$4,000,000 liquor liability annual aggregate each occurrence - \$2,000,000; and medical expense (anyone person) - \$5,000;

12.2.1.2 Excess liability insurance (follow form excess

1 or umbrella), liquor liability, commercial general liability, automobile
2 liability and employers liability) with minimum coverages as follows:
each occurrence - \$25,000,000; aggregate - \$25,000,000;

3 ...

4 12.2.3 Except with respect to workers compensation and the
5 employee practices liability insurance, [NRV1], [Cosmopolitan], the
6 landlord and tenant under the Lease, Hotel Operator, their respective
7 parents, subsidiaries and Affiliates, and their respective officers,
directors, officials, managers, employees and agents (collectively
"Owner Insured Parties"), shall all be named as additional insureds on
all other [Marquee] Policies.

8 ...

9 12.2.5 All insurance coverages maintained by [Marquee] shall be
10 primary to any insurance coverage maintained by any Owner Insured
11 Parties (the "Owner Policies "), and any such Owner Policies shall be
12 in excess of, and not contribute towards, [Marquee] Policies. The
[Marquee] Policies shall apply separately to each insured against
whom a claim is made, except with respect to the limits of the
insurer's liability.

13 12.2.6 All Owner Policies and [Marquee] Policies shall contain a
14 waiver of subrogation against the Owner Insured Parties and
[Marquee] and its officers, directors, officials, managers, employees
15 and agents and the [Marquee] Principals. The coverages provided by
[NRV1] and [Marquee] shall not be limited to the liability assumed
16 under the indemnification provisions of this Agreement.

17 [Bonbrest Decl., Ex. 1, at T000124 – T000126].

18 Response: Irrelevant as Cosmo is not a party to the Management Agreement.

19 Fact No. 20: The NMA provides:

20 13. Indemnity

21 13.1 By [Marquee]. [Marquee] shall indemnify, hold harmless and
22 defend [NRV1] and its respective parents, subsidiaries and Affiliates
and all of each of their respective officers, directors, shareholders,
23 employees, agents, members, managers, representatives, successors
and assigns ("Owner Indemnitees") from and against any and all
24 Losses to the extent incurred as a result of (i) the breach or default by
[Marquee] of any term or condition of this Agreement, or (ii) the
25 negligence or willful misconduct of [Marquee] or any of its owners,
principals, officers, directors, agents, employees, Staff, members, or
managers ("[Marquee] Representatives") and not otherwise covered
26 by the insurance required to be maintained hereunder.

27 [Marquee's] indemnification obligation hereunder shall include
liability for any deductibles and/or self retained insurance retentions
28 to the extent permitted hereunder, and shall terminate on the
termination of the Term; provided however that such indemnification

1 obligation shall continue in effect for a period of three (3) years
2 following the termination of the Term with respect to any events or
3 occurrences occurring prior to the termination of the Term.
4
5 13.2 By [NRV1]. [NRV1] shall indemnify, hold harmless and defend
6 [Marquee] and its respective parents, subsidiaries and Affiliates and
7 all of each of their respective officers, directors, shareholders,
8 employees, agents, members, managers, representatives, successors
9 and assigns ("[Marquee] Indemnitees") from and against any and all
10 Losses to the extent incurred as a result of (i) the breach or default by
11 [NRV1] of any term or condition of this Agreement or (ii) the
12 negligence or willful misconduct of [NRV1] or any of its owners,
13 principals, officers, directors, agents, employees, members, or
14 managers and not otherwise covered by the insurance required to be
15 maintained hereunder. [NRV1's] indemnification obligation
16 hereunder shall terminate on the termination of the Term; provided,
17 however, that such indemnification obligation shall continue in effect
18 for a period of three (3) years following the termination of the Term
19 with respect to any events or occurrences occurring prior to the
20 termination of the Term.
21
22 [Bonbrest Decl., Ex. 1, at T000126 - T000127].

23 Response: Irrelevant as Cosmo is not a party to the Management Agreement.

24 Fact No. 21: The NMA provides:

25 **20. Third Party Beneficiary**

26 Except as otherwise expressly provided herein, the Parties
27 acknowledge and agree that [NRV1] may assign, delegate or jointly
28 exercise any or all of its rights and obligations hereunder to or with
anyone or more of the following: [Cosmopolitan], Hotel Operator,
Casino Operator and/or their Affiliates, or any successors thereto
(collectively "Beneficiary Parties"). All such Beneficiary Parties to
whom certain rights and obligations of [NRV1] have been assigned
shall, to the extent of such assigned, delegated or shared rights and
obligations, be an express and intended third-party beneficiary of this
Agreement. Without limiting the generality of the foregoing,
Beneficiary Parties shall have the right to enforce the obligations of
[NRV1] to the extent of the rights and obligations assigned to,
delegated to or shared with the Beneficiary Party by [NRV1]. Except
as provided above, nothing in this Agreement, express or implied,
shall confer upon any person or entity, other than the Parties their
authorized successors and assigns, any rights or remedies under or by
reason of this Agreement.

25 [Bonbrest Decl. Ex. 1, at T000141].

26 Response: Irrelevant as Cosmo is not a party to the Management Agreement.

27 Fact No. 22: The NMA provides:

28 **28. Attorneys' Fees**

In the event of a dispute between the Parties concerning the enforcement or interpretation of this Agreement, the prevailing party in such dispute, whether by legal proceedings or otherwise, shall be reimbursed immediately by the other party to such dispute for reasonably incurred attorneys' fees and other costs and expenses. In the event it becomes necessary for any party to retain legal counsel for the representation of its rights hereunder in or in connection with the bankruptcy of another party, such party, if successful therein, shall be reimbursed immediately by the party in bankruptcy for reasonably incurred attorneys' fees and other costs and expenses.

[Bonbrest Decl., Ex. 1, at T000144].

Response: Irrelevant as Cosmo is not a party to the Management Agreement.

Fact No. 23: Marquee is an insured under National Union commercial umbrella liability policy number BE 25414413, effective October 6, 2011 to October 6, 2012, issued to The Restaurant Group, et al. ("National Union Policy"). [FAC ¶30; Declaration of Richard C. Perkins in Support of National Union Fire Insurance Company of Pittsburgh PA's Motion for Summary Judgment, Ex. 1].

Response: Agreed that AIG insures both Marquee and Cosmo.

Fact No. 24: Cosmopolitan is an insured under St. Paul commercial umbrella liability policy number QK06503290, effective March 1, 2011 to March 1, 2013 issued to Premier Hotel Insurance Group ("St. Paul Policy"). [FAC ¶40; Salerno Decl., Ex. 2].

Response: Agreed that Cosmo (but not Marquee) is an insured.

Fact No. 25: Marquee was a named insured on the Aspen and National Union Policies, while Cosmopolitan was a named insured under the St. Paul Policy and a primary policy issued by Zurich American Insurance Company. [FAC ¶¶ 15, 24, 30, 33, 40-41].

Response: Disputed as Aspen and AIG insure both Marquee and Cosmopolitan. Zurich and St. Paul only insure Cosmopolitan (not Marquee).

Fact No. 26: Cosmopolitan was an additional insured under the policies issued by Aspen and National Union. [FAC ¶¶ 15, 24, 30, 33, 40-41].

Response: Agreed that Aspen and AIG insure both Marquee and Cosmopolitan.

Fact No. 27: St. Paul policy contains an endorsement entitled "Waiver of Rights of Recovery

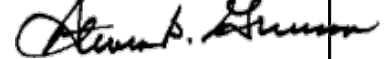
1 Endorsement," which provides that if Cosmopolitan has agreed in a written contract to waive its
2 rights to recovery of payment for damages for bodily injury, property damage, or personal injury or
3 advertising injury caused by an occurrence, then St. Paul agrees to waive its right of recovery of
4 such payment. [Salerno Decl., Ex. 2, at T000038].

5 Response: Irrelevant as Cosmo is not a party to the Management Agreement and never
6 agreed to waive its rights to recover.

7 Dated: September 27, 2019

8 MORALES FIERRO & REEVES

9
10 By /s/ William C. Reeves
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11 St. Paul Fire & Marine Ins. Co.

12 DISTRICT COURT

13 CLARK COUNTY, NEVADA

14 ST. PAUL FIRE & MARINE INS. CO.,)	Case No.: A758902
)	Dept. No.: XXVI
15 Plaintiff,)	
)	
16 v.)	
)	
17 ASPEN SPECIALTY INS. CO., et al.,)	
)	
18 Defendants.)	

19 OPPOSITION TO MOTION FOR SUMMARY JUDGMENT FILED BY AIG AND
20 REQUEST FOR DISCOVERY PER NRCP 56(d)

21 Additional Documents: Consolidated Appendix (A-V);
22 Declaration of Marc Derewetzky, Response to Facts

23 Date: October 15, 2019
24 Time: 9:30 a.m.

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17	<u>Other State Cases</u>	
18	<i>21st Century Ins. Co. v. Superior Court</i> ,	
19	47 Cal. 4th 511, 213 P.3d 972 (2009)	15
20	<i>California Capital Ins. Co. v. Scottsdale Indem. Ins. Co.</i> ,	
21	No. F070598, 2018 WL 2276815 (Cal. Ct. App. May 18, 2018)	24
22	<i>Central Illinois Public Service Co. v. Agricultural Ins. Co.</i> ,	
23	378 Ill.App.3d 728 (2008)	20
24	<i>Fortis Benefits v. Cantu</i> ,	
25	234 S.W.3d 642 (Tex. 2007)	11
26	<i>Guideone Mut. Ins. Co. v. Utica Nat'l Ins. Grp.</i> ,	
27	213 Cal. App. 4th 1494, 153 Cal. Rptr. 3d 463 (2013)	22
28	<i>Hartford Cas. Ins. Co. v. Mt. Hawley Ins. Co.</i> ,	
	123 Cal.App.4th 278 (2004)	18
	<i>Interstate Fire & Cas. Ins. Co. v. Cleveland Wrecking Co.</i> ,	
	182 Cal.App.4th 23, 105 Cal.Rptr.3d 606 (2010)	24
	<i>Kim v. Lee</i> ,	
	145 Wash. 2d 79, 31 P.3d 665 (Wash. 2001)	9
	<i>Lheto v. Allstate Ins. Co.</i> ,	
	31 Cal.App.4 th 60 (1994)	26
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1	<i>Nat'l Union Fire Ins. Co. of Pittsburgh, Pa. v. Riggs Nat. Bank of Washington, D.C.</i> ,	11
2	646 A.2d 966 (D.C. 1994)	
3	<i>Progressive W. Ins. Co. v. Yolo Cty. Superior Court</i> ,	15
4	135 Cal. App. 4th 263, 37 Cal. Rptr. 3d 434 (2005)	
5	<i>Puente v. Beneficial Mortg. Co. of Indiana</i> ,	11
6	9 N.E.3d 208 (Ind. Ct. App. 2014))	
7	<i>Pulte Home Corp. v. Parex, Inc.</i> ,	9
8	174 Md. App. 681, 923 A.2d 971 (2007)	
9	<i>aff'd</i> , 403 Md. 367, 942 A.2d 722 (2008)	
10	<i>Roberts v. Total Health Care, Inc.</i> ,	11
11	109 Md. App. 635, 675 A.2d 995 (1996)	
12	<i>aff'd</i> , 349 Md. 499, 709 A.2d 142 (1998)	
13	<i>Rossmoor Sanitation, Inc. v. Pylon, Inc.</i> ,	17, 18
14	13 Cal.3d 622 (1975)	
15	<i>State Farm Gen. Ins. Co. v. Wells Fargo Bank, N.A.</i> ,	16
16	143 Cal.App.4th 1098, 49 Cal.Rptr.3d 785 (2006)	
17	<i>Strauss v. Farmers Insurance Exchange</i> ,	26
18	26 Cal.App.4 th 1017 (1994)	
19	<i>Strong v. Cnty. of Santa Cruz</i> ,	27
20	15 Cal.3d 720, 125 Cal.Rptr. 896, 543 P.2d 264 (1975)	
21	<i>Troost v. Estate of DeBoer</i> ,	24
22	155 Cal. App. 3d 289, 202 Cal. Rptr. 47 (Ct. App. 1984)	
23	<i>U.S. Bank Nat. Ass'n v. Hylton</i> ,	10
24	403 N.J. Super. 630, 959 A.2d 1239 (Ch. Div. 2008)	
25	<u>Federal Cases</u>	
26	<i>Admiral Ins. Co. v. Illinois Union Ins. Co.</i> ,	25
27	No. 208CV01300RCJRJJ, 2010 WL 11579447, at *3 (D. Nev. May 24, 2010)	
28	<i>Berkeley v. Fireman's Fund Ins. Co.</i> ,	22
29	407 F. Supp. 960 (W.D. Wash. 1975)	
30	<i>Burlington Northern Santa Fe Ry. Co. v. The Assiniboine</i> ,	6, 7
31	323 F.3d 767 (9th Cir. 2003)	
32	<i>Celotex Corp. v. Catrett</i> ,	6
33	477 U.S. 317 (1986)	
34	<i>Colony Ins. Co. v. Colorado Cas. Ins. Co.</i> ,	13
35	2016 WL 3360943 (D. Nev. June 9, 2016)	
36	<i>Colony Ins. Co. v. Colorado Cas. Ins. Co.</i> ,	13
37	2018 WL 3312965 (D. Nev. July 5, 2018)	

1	<i>Duke v. Hoch,</i>	
2	468 F.2d 973 (5th Cir. (Fla.) 1972)	22
3	<i>Elec. Constr. & Maint. Co., Inc. v. Maeda Pac. Corp.,</i>	
4	764 F.2d 619 (9th Cir.1985)	26
5	<i>Gearing v. Check Brokerage Corp.,</i>	
6	233 F.3d 469 (7th Cir. (Ill.) 2000)	10
7	<i>Great American Ins. Co. of New York v. North American Specialty Ins. Co.,</i>	
8	542 F.Supp.2d 1203 (D. Nev. 2008)	25
9	<i>Magnum Foods, Inc. v. Cont'l Cas. Co.,</i>	
10	36 F.3d 1491 (10th Cir. 1994)	22
11	<i>Maryland Cas. Co. v. Acceptance Indem. Ins. Co.,</i>	
12	639 F.3d 701 (5th Cir. 2011)	24
13	<i>National Sur. Corp. v. Hartford Cas. Ins. Co.,</i>	
14	493 F.3d 752 (6th Cir. 2007)	20
15	<i>In re Negrete,</i>	
16	183 B.R. 195 (1995)	8
17	<i>Phillips v. State Farm Mut. Auto. Ins. Co.,</i>	
18	73 F.3d 1535 (10th Cir. 1996)	11
19	<i>Texas Partners v. Conrock Co.,</i>	
20	685 F.2d 1116 (9th Cir. 1982)	6
21	<i>Wal-Mart Stores, Inc. v. RLI Ins. Co.,</i>	
22	292 F.3d 583 (8 th Cir. 2002)	18
23	<i>In re WorldCom, Inc. Sec. Litig.,</i>	
24	354 F. Supp. 2d 455 (S.D.N.Y. 2005)	19
25	<i>Zurich Am. Ins. Co. v. Acadia Ins. Co.,</i>	
26	243 F. Supp. 3d 1201 (D. Colo. 2017)	18
27	<u>Statutes</u>	
28	Nevada Revised Statutes 41.100	15
	Nevada Rule of Civil Procedure 56(a)	5
	Nevada Rule of Civil Procedure 56(d)	5, 6, 7, 21, 23
	Nevada Rule of Civil Procedure 56(f)	5, 6
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Other

73 Am. Jur. 2d Subrogation § 2	9
73 Am. Jur. 2d Subrogation § 3	11
73 Am. Jur. 2d Subrogation § 4	11, 14
73 Am. Jur. 2d Subrogation § 5	10
73 Am. Jur. 2d Subrogation § 7	10
73 Am. Jur. 2d Subrogation § 75	9
Litig. & Prev. Ins. Bad Faith § 7:9	19
1 Practical Tools for Handling Insurance Cases § 8:2 (Thomson Reuters 2018)	20

1 Introduction

2 Defendant National Union Fire Insurance Company of Pittsburgh, PA ("AIG")¹ jointly
3 defended two insureds - Nevada Property 1, LLC, dba the Cosmopolitan ("Cosmo") and Roof Deck
4 Entertainment, LLC dba Marquee ("Marquee") – in an underlying personally injury action through
5 counsel with a disqualifying conflict. AIG further rejected multiple reasonable settlement demands
6 within its limits that would have eliminated its insureds' exposure. Instead of settling, AIG chose to
7 gamble with its insureds' money by taking dangerous, high exposure claims to trial, despite its own
8 defense counsel's warnings, before any settlement demand was made, that the claims had a
9 reasonable value in excess of \$300,000,000.

10 But when AIG's ill-conceived gamble failed, resulting in a massive verdict against both of
11 AIG's insureds substantially in excess of every pretrial settlement demand, it refused to fully fund a
12 post-judgment settlement demand. As a result, St. Paul was compelled to pay millions that it never
13 should have had to pay to rescue its own insured, Cosmo, from AIG's bad faith. St. Paul, standing
14 in the shoes of Cosmo, now seeks to hold AIG accountable.

15 This Court previously denied AIG's motion to dismiss St. Paul's First Amended Complaint
16 ("FAC") on the identical grounds raised in AIG's summary judgment motion, but without prejudice
17 to AIG citing matters outside the pleadings: i.e., St. Paul's policy and AIG's own insured's
18 Nightclub Management Agreement ("Management Agreement"). One would think, therefore, that
19 its arguments would focus on these documents. But no. In reality, AIG's motion mentions the St.
20 Paul policy only in passing, while the Management Agreement is not addressed at all. Given this,
21 AIG summary judgment motion is but an improper "second bite at the apple." See, e.g., *State*
22 *Engineer v. Eureka County*, 133 Nev. 557 (2017).

23 AIG here again argues that Nevada law does not permit one insurer to pursue subrogated
24 claims against another, and even if it did, that St. Paul lacks the requisite "superior equities." But
25 Nevada law recognizes subrogation in these circumstances and St. Paul plainly has superior equities
26 because (1) its insured was only passively liable while AIG's insured's negligence and willful

27 _____
28 ¹ Issues relating to Defendant Aspen Specialty Insurance Company are addressed in separate cross-motions for
summary judge currently pending before the court.

misconduct actually caused the injuries; (2) AIG prejudiced St. Paul's and Cosmo's rights by defending Cosmo through conflicted counsel; (3) AIG rejected multiple reasonable policy limits demands while St. Paul had no opportunity to settle pre-verdict; and (4) the St. Paul policy is excess to the AIG policy by virtue not only of the plain terms of the Management Agreement but also because AIG consistently represented that the St. Policy was excess to its own policy, and acted as it if were by intentionally not involving St. Paul in the case until the eve of trial. And St. Paul's contractual subrogation claim does not require superior equities. This Court has already rejected these identical arguments and should do so again.

Subrogation allows an insurer that pays for an injury to another caused by a third party to step into the injured party's shoes to recover the amount paid from the wrong doer. Thus, the burden of the loss is placed on the party that caused it, where it belongs. Here, St. Paul paid the settlement on behalf of Cosmo which resulted from AIG's wrongful refusal to pay for damages resulting from its bad faith conduct. St. Paul, therefore, is subrogated to Cosmo's rights to pursue AIG for those damages.

AIG again argues that St. Paul has no claim because its insured, Cosmo, suffered no damage. Nonsense. It is a bedrock principle of subrogation that the entity bringing the claim has paid another's loss, so the subrogee *rarely* has any damage. AIG also repeats its arguments that Nevada law does not recognize equitable contribution or equitable estoppel. The Court already reject these same arguments – and AIG is *still* wrong.

If, however, the Court is inclined to grant the motion, it should allow St. Paul, under Nevada Rule of Civil Procedure 56(d), to obtain discovery on a number of issues relating to the equities of this case, including (1) the conflict of interest in AIG retaining a single firm to represent Marquee and Cosmo jointly; (2) underlying plaintiff's settlement offers and their rejection; and (3) representations that St. Paul's policy would respond excess to AIG's policy.²

² St. Paul served discovery on AIG shortly after the Rule 16 conference, when discovery opened under the Rules. The Court has stayed the discovery pending a motion to the Discovery Commissioner seeking an order phasing discovery. On the other hand, St. Paul has agreed to the authenticity of the Management Agreement and St. Paul's policy, which AIG erroneously claims were necessary to support the arguments in its Motion to Dismiss.

1 Accordingly, for the reasons set forth herein, it is respectfully submitted that AIG's motion
2 be denied.³

3 Background Facts

4 This dispute arises out of a \$160,500,000 verdict entered against both Cosmopolitan and
5 Marquee in connection with the *Moradi* matter (“Underlying Action”). Exhibit R. In the
6 Underlying Action, the jury found that Moradi was injured by Marquee personnel at the Marquee
7 Nightclub so as to sustain lost income in excess of \$100,000,000. Exhibit R. There was no
8 evidence presented at trial that Cosmo was directly liable for Moradi’s injuries and no evidence
9 that Cosmo had any role in hiring, training or supervising the Marquee personnel. Declaration of
10 Marc J. Derewetzky in Support of Opposition to AIG’s Motion For Summary Judgment, filed
11 concurrently herewith (“Derewetzky Decl.”), ¶ 25. No Cosmo employee or manager testified at
12 trial. Derewetzky Decl., ¶ 25. Prior to trial, the Court denied Cosmo’s motion for summary
13 judgment finding instead that Cosmo had a non-delegable duty to exercise reasonable care so as
14 not to subject others to an unreasonable risk of harm. Derewetzky Decl., ¶ 25. Accordingly, at trial
15 Cosmo was found jointly and severally liable with Marquee to Moradi not as a result of any act or
16 omission by Cosmo, but vicariously. Exhibit R.

17 AIG’s own “undisputed facts” unequivocally state that Cosmo’s liability was vicarious
18 only. See AIG’s Undisputed Fact 2 (Moradi was attacked by Marquee employees); AIG
19 Undisputed Fact 5 (Moradi asserted that Cosmo faced exposure for breaching its non-delegable
20 duty); AIG Undisputed Fact 6 (the Court held as a matter of law that Cosmo “had a non-delegable
21 duty and can be vicariously held responsible for the conduct of the Marquee security officers. . .”).

22 At all times relevant herein, Marquee managed and operated the Club Marquee for the
23 benefit of Cosmo. Exhibit A. Pursuant to that written contract, Marquee agreed to defend and
24 indemnify Cosmo for any and all claims while also agreeing that Cosmo would be named as an
25 additional insured under any liability policies Marquee procured. Exhibit A.

26 AIG issued liability policies to Marquee pursuant to which Cosmo qualified as an

27 _____
28 ³ A separate issue has arisen regarding the purported timeliness of this brief. This issue is addressed in the separate
Opposition to Marquee's motion filed herewith.

1 additional insured. AIG Undisputed Fact 18. In response to a tender, Aspen agreed to provide a
2 joint defense to both Marquee and Cosmo while AIG, based on the large exposure, agreed to do the
3 same. Exhibits L, M.

4 AIG provided a single set of attorneys to represent Cosmo and Marquee jointly, despite the
5 fact that Cosmo was entitled to be indemnified by Marquee pursuant to contract, thus improperly
6 waiving Cosmo's rights. Exhibit A; Derewetzky Decl., ¶ 26. AIG mishandled the claims and then
7 failed to accept reasonable settlement offers within their limits. Exhibits G, H, I K; Derewetzky
8 Decl., ¶ 27. Aspen and AIG failed to inform either Cosmopolitan or St. Paul of opportunities to
9 settle before the offers expired. Derewetzky Decl., ¶ 28. These offers included a statutory offer of
10 judgment for \$1.5 million dated December 10, 2015 and offers to settle for \$26 million (the
11 undisputed amount of the combined Aspen and AIG limits) presented on November 2, 2016 and
12 March 9, 2017, shortly before trial commenced. Exhibits G, H, I, K . And throughout the
13 Underlying Action, AIG consistently represented that its coverage for Cosmopolitan was primary
14 to St. Paul's coverage and, therefore, that AIG was responsible for defending and resolving the
15 Underlying Action. Derewetzky Decl., ¶ 29.

16 Rather than accept a settlement demand within its limits that would have insulated both
17 Marquee and Cosmo, AIG elected to reject the demands and instead unreasonably take its chances
18 that they would do better at trial. AIG lost this gamble spectacularly, by virtue of the jury
19 awarding damages in excess of \$160,000,000. Derewetzky Decl., ¶ 30. Exhibit R.

20 Having lost its gamble AIG then took the position that its exposure was capped at the limits
21 of its policy (\$26,000,000 when combined with the limits Aspen claimed were available), and that
22 they would pay the alleged policy limit to protect Marquee but not Cosmo. Derewetzky Decl., ¶
23 31. Throughout, AIG conducted itself by word and deed as though its policy was obligated to pay
24 the Moradi claims before St. Paul was required to pay, rendering the St. Paul policy excess to the
25 AIG policy. Derewetzky Decl., ¶ 32. But AIG failed to avail itself of opportunities to spend its
26 limits to protect *both* of its insureds, opportunities that were never presented to St. Paul.
27 Derewetzky Decl., ¶ 32; Exhibits I, K. With a joint and several judgment hanging over its named
28 insured's head, St. Paul funded Cosmo's portion of the settlement. Derewetzky Decl., ¶ 32. St.

Paul now seeks reimbursement from Aspen, AIG and Marquee for the sums incurred and paid.

LEGAL STANDARDS

I. Summary Judgment Standard

Under Rule 56(a) of the Nevada Rules of Civil Procedure, “[s]ummary judgment is appropriate and ‘shall be rendered forthwith’ when the pleadings and other evidence on file demonstrate that no ‘genuine issue as to any material fact [remains] and that the moving party is entitled to a judgment as a matter of law.’” *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). “The party moving for summary judgment bears the initial burden of production to show the absence of a genuine issue of material fact. If such a showing is made, then the party opposing summary judgment assumes a burden of production to show the existence of a genuine issue of material fact.” *Cuzze v. University and Community College System of Nevada*, 123 Nev. 598, 602, 172 P.3d 131, 134 (2007). “The substantive law controls which factual disputes are material and will preclude summary judgment; other factual disputes are irrelevant. A factual dispute is genuine when the evidence is such that a rational trier of fact could return a verdict for the nonmoving party.” *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005). However, “the nonmoving party . . . bears the burden to ‘do more than simply show that there is some metaphysical doubt’ as to the operative facts in order to avoid summary judgment being entered in the moving party’s favor.” *Id.* Rather, “[t]he nonmoving party ‘must, by affidavit or otherwise, set forth specific facts demonstrating the existence of a genuine issue for trial or have summary judgment entered against him.’ The nonmoving party ‘is not entitled to build a case on the gossamer threads of whimsy, speculation, and conjecture.’” *Id.*

II. Application of NRCP 56(d)

Rule 56(d) of the Nevada Rules of Civil Procedure⁴ provides:

When Facts Are Unavailable to the Nonmovant. If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may:

(1) defer considering the motion or deny it;

⁴ The NRCP was recently amended to change Rule 56(f) to Rule 56(d). Therefore, cases discussing this rule may refer to old Rule 56(f) which is now Rule 56(d).

1 (2) allow time to obtain affidavits or declarations or to take
2 discovery; or

3 (3) issue any other appropriate order.

4 Entry of summary judgment is proper only “after adequate time for discovery and upon
5 motion, against a party who fails to make a showing sufficient to establish the existence of an
6 element essential to that party’s case, and on which that party will bear the burden of proof at trial.”
7 *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986) (emphasis added). Nevada Rule of Civil
8 Procedure 56(d) allows the Court to refuse summary judgment, continue a hearing or “make such
9 other order as is just” when a party opposing summary judgment demonstrates that it cannot “for
10 reasons stated present by affidavit facts essential to justify the party’s opposition.” Nev. R. Civ. P.
11 56(f); see also *Texas Partners v. Conrock Co.*, 685 F.2d 1116, 1119 (9th Cir. 1982) (reversing
12 summary judgment where plaintiffs were not afforded opportunity to proceed with discovery). Rule
13 56(d) provides a device for litigants to avoid summary judgment when they have not yet had
14 sufficient time to develop affirmative evidence. *Burlington Northern Santa Fe Ry. Co. v. The*
15 *Assiniboine*, 323 F.3d 767, 773 (9th Cir. 2003); *Aviation Ventures, Inc. v. Joan Morris, Inc.*, 110
16 P.3d 59, 62-63, 121 Nev. 113 (Nev. 2005) (finding court abused its discretion by not permitting the
17 non-movant to engage in discovery pursuant to Rule 56(f), now Rule 56(d), to allow it an
18 opportunity to marshal facts to oppose a motion for summary judgment).

19 The timing of a summary judgment motion is particularly significant when considering a
20 Rule 56(d) request for more time. Thus, where a summary judgment motion is brought early in the
21 litigation, a Rule 56(d) motion for additional time should be granted *as a matter of course*.
22 *Burlington Northern*, 323 F.3d at 774. In *Burlington Northern*, the Ninth Circuit reviewed the trial
23 court’s grant of a motion for summary judgment filed by plaintiff less than one month after the
24 plaintiff initiated suit. The Ninth Circuit reversed, holding that the defendant’s Rule 56[d] motion
25 should have been granted insofar as the discovery sought was dispositive of a pivotal question in the
26 action. *Id.* On the issue of timing, the Ninth Circuit counseled: “Where ... a summary judgment
27 motion is filed so early in the litigation, before a party has had any realistic opportunity to pursue
28 discovery relating to its theory of the case, district courts should grant any Rule 56[d] motion fairly

freely.” *Id.* at 773.

Nevada courts agree with the Ninth Circuit and readily find that it is an abuse of discretion to refuse a party discovery to oppose a summary judgment motion where either the requesting party has not been dilatory or the case is at an early stage of the proceedings. See, e.g., *Halimi. H.R. Blacketor*, 105 Nev. 105, 106, 770 P.2d 531 (1989); *Harrison v. Falcon Products, Inc.*, 103 Nev. 558, 560, 746 P.2d 642 (1987); *Aviation Ventures*, 110 P.3d at 62-63.

A Rule 56(d) request for time to conduct discovery should be granted where the party making the request: (1) submits an affidavit setting forth the specific facts that they hope to obtain from discovery; (2) that the facts sought exist; and (3) that these facts are essential to oppose summary judgment. *State of Cal. v. Campbell*, 138 F.3d 772, 779 (9th Cir. 1998); *Aviation Ventures*, 110 P.3d at 62 (“a motion for a continuance under NRCP 56[d] is appropriate only when the movant expresses how further discovery will lead to the creation of a genuine issue of material fact”). Due to the infancy of this action, the specificity required of Plaintiff in describing the facts likely to be discovered is not a stringent requirement. See *Burlington Northern*, 323 F.3d at 774 (explaining that, “where... no discovery whatsoever has taken place, the party making a Rule 56[d] motion cannot be expected to frame its motion with great specificity as to the kind of discovery likely to turn up useful information, as the ground for such specificity has not yet been laid”).

Argument

I. The Court Should Bar AIG From Taking A Second Bite Of The Apple.

That AIG is seeking a second bite of the apple is undeniable. Large portions of its motion have been lifted nearly verbatim from its failed motion to dismiss. See, Motion to Dismiss at 7:18-8:10 and MSJ at 15:1-21; Motion to Dismiss at 12:8-14:7 and MSJ at 17:1-19-2. And AIG has taken the opportunity to “improve” its arguments by citing cases not cited in the motion to dismiss even though these cases were available to it previously.⁵ Moreover, the Court denied the motion to dismiss without prejudice to allow AIG to include arguments based on the St. Paul policy and

⁵ See, e.g., MSJ at 14:16-21, citing *Everest Natl. Ins. Co. v. Evanston Ins. Co.* (unpublished opinion of U.S. District Court); *CSE Ins. Group v. Northbrook Prop & Cas. Co. and Century Surety Co. v. United Pacific Ins. Co.* (both California Appellate Court opinions), none of which were cited in the motion to dismiss.